

THE
A R G U M E N T S
OF
C O U N S E L
IN THE
ECCLESIASTICAL COURT
IN THE CAUSE OF
I N G L E F I E L D.

WITH THE
SPEECH OF DOCTOR CALVERT;
ON THE TWENTY-SECOND OF JULY, 1786,
AT GIVING JUDGMENT.

Printed from an Authentic Copy of Mr. GURNEY's Short
Hand Notes.

L O N D O N:
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M.DCC.LXXXVII.



Dr. H A R R I S.

S I R,

I AM of counsel in this cause on the behalf of Mrs. Inglefield, who is so unfortunate as to be under the necessity of bringing a suit against her husband on account of desertion.

She is obliged, first, to set forth her marriage; then the fact of desertion; then she prays, that the court will decree a monition against him, and order him to take her home, and to treat her kindly.

He, in answer to that, has acknowledged the marriage and the desertion, but has set up a circumstance, which, he says, will not only be a sufficient ground for refusing to take her home again; but will occasion a divorce in the present case: and he says, not only that she was very familiar with his black servant, but that she had committed adultery with him.

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She,

She, in answer to that, says, that Captain Inglefield had a design to part from her; that he ceased to like her so well as he had done before; that he had therefore formed a scheme, in order to get rid of her: and that the whole of the business of the charge laid against her, is entirely false and groundless.

This is the general substance of the allegations which are before you. The character of the lady is indisputable; there is not one witness, either for or against her in the cause, who does not say, they looked upon her as a virtuous woman, an affectionate wife, and a good mother, till they heard this story. The servants say, that the black always treated her with respect: that could not have been the case, if there had been any of the familiarities between them, which are laid in the charge. A strong proof of her affection for her husband is, that she was very ill when she heard of the Captain's danger; and much lamented his long absence.

There is evidence, that Captain Inglefield was a *very jealous husband—extremely upon the watch—he was continually inquiring of the servants,** whether any man had been there; and how she employed her time during his absence.

None of these witnesses say, that he made the least inquiry about the black, notwithstanding he

* This is denied by the lady's servants, except Elizabeth Wells; and *she* declares, that she never heard from him, Captain Inglefield, or from any other person, that he suspected her with any man.



was in the habit of inquiry ; he certainly would not have been backward to inquiry, particularly with respect to him, if he had at the same time any thing to allege against him ; if the fact had been, that he had seen what he says he had seen : if he had heard what he says he had heard, the scene of inquiry would certainly have laid at land, and not at sea* ; at his house at Singlewell, where he might have had a variety of opportunities of inquiring much more than he could have had on board a ship.

If he did see, and if he did hear, what he says in that letter, that he saw and heard, he is a man of a very extraordinary temper and conduct indeed : if he meant to detect her, certainly his own house was the place. No, he orders this lady on board the ship (without a female servant), and this black as her attendant, among those, who to a man must necessarily be under his power ; his steward, of whom he was the maker, who depends upon him for his support ; and the black boy, on whom certainly he could better operate (perhaps very well at land), but he could better manage him at sea than in any other place.

I would now state the circumstance of the letter, which the gentlemen on the other side threaten me with : but I am not at all afraid of that letter. This letter has no direction ; and it has no date ; but the contents of it will afford a direction : he begins with saying, “ My letter would have informed you of your accuser—

Now, there is no information of the kind, there is no information throughout the whole cause that I know of, from whom the anonymous letter came.—“A piece of paper was put into my hands, intimating what I knew*.” One would have expected to have seen that piece of paper exhibited in this cause: it is not, nor is there any thing about it: as it was an anonymous letter, he could not say from whom it came; but it would have been some corroboration.—“I went on board and I taxed the boy; he cried, and said his mistress would kill him.” Now, throughout the whole evidence in this cause, there is not a tittle of this circumstance, that the boy on his part said, that his mistress said she would kill him, or threatened him in any way whatever. Then this is at least an assertion in the letter unproved.—“In the night you rang the bell; Betty went—you said, you wanted Jack.” Now, Elizabeth or Betty is examined in the cause. Elizabeth Wells says, *she remembers that circumstance extremely well*; and it must have been the circumstance Captain Inglefield alludes to, because he told her of it himself: her mistress was frightened, as she thought thieves were coming into the house, and she rang the bell: she went to her; but her mistress said not a word about the black boy. Then this assertion is plainly disproved. He says, “I found the boy bore the jokes of the servants in the family.” That is another

another assertion in this letter which is absolutely disproved*. The boy himself declares, in his first examination, that he knows nothing of any jokes; or that any body knew any thing of the business:—It was then entirely between him and his master; and all the servants, who must have been the jokers in the business, deny that they know a syllable of the matter. Then the facts which he has stated in this letter are proved to be false. “You said if he told, the world would not believe, and that I would not believe; and that I would flog him to death.” There is no proof at all of that, from any of the declarations made by the boy.

The conclusions I mean to draw from this letter are these.—If a gentleman in a letter does advance things as facts, some of which are proved to be falsties, we must believe, with great diffidence, other circumstances, which he would advance as facts: that is the inference I would make from it. God knows whether it is a right or a wrong one, but I think it is a fair one.—He goes on in this letter to say, “that, through a window I saw him kiss you, and Kitty in the room; and though it destroyed my peace of mind, I thought it nothing more than an improper piece of imprudence, arising from curiosity, and instead of ac-

* The black, when examined on the part of his mistress, confesses, that he told Mr. Pilcher, that he believed Betty Wells suspected an intimacy between him and his mistress.

eusing you, I still advised you; and willing to know whether the child had seen it, I told her "she never saw any body kiss mamma but me;" when she instantly replied, "yes, she had seen Jack the black." All this, after what I have said, we must give him credit for; and I say it will be a credit with a very great drawback. He says, "I thought this nothing more (seeing her kiss the black boy), I thought it nothing more than an improper imprudence arising from curiosity."—This seems to confute itself; it is almost impossible that a man should have such a thought. "I have constantly cautioned you against him and when we embarked on board the Scipio; I advised you to be particularly cautious, yet you were so much bedevilled, that you could not help calling him into the cabin. When I came on board, the boy then declared your practices, but, he said, he was so much afraid, that he never was criminal." This contradicts the allegation.

It was very extraordinary that there was no inquiry. If these are facts, one would think they are such that human nature could not conceal; that they were facts, which he must tell somebody of. This gentleman, who is so amiable, must have had many friends; I dare say he has (I do not know whether the gentlemen will suffer me to go so far out of the cause): but I am told, he is as elegant, and as accomplished a man, as any in the kingdom; that makes the story a great deal more improbable than it would otherwise have

have been. I won't put myself to the pain of contrasting a poor black slave with him; it is on the face of it improbable to the last degree; circumstance after circumstance makes it still more so as we go on.

This poor lady is carried on board a ship; the inquiry is not made on land; the Captain is forced to have recourse to his steward, Mr. M'Carthy, and to this boy. Now, I am not afraid of entering into their examination directly, although, perhaps, in a case less strong than this, I should make some remarks upon the circumstances, before I durst enter into a discussion of their evidence; but I think, from their examination only, such a strong evidence will arise in favour of the lady, that their own examinations will defeat themselves; and if it was not, that I must necessarily go through my duty, I need do no more than shortly to recapitulate what the man and the boy say, and make some few observations upon it; from whence it will appear, that it is a mere fable; and that their evidence could not possibly have any weight from the Captain's own stating of it; for no man can be divorced from his wife, unless he is fairly made a cuckold; let the witnesses say what they will, if it does not come up to that, it is a blow without force, and something that does not hurt.

Now Mr. M'Carthy is charged and primed in order to be let off. The Captain had invited him often to his house, therefore he had an opportunity of seeing them at home and abroad: he asks M'Carthy, if he had observed any familiarities

rities pass between his lady and John Webb? And upon Mr. M'Carthy's telling him he had not, he desired him to keep a sharp look-out; and though he does so, yet he is a fortnight before he observes any thing at all: at last, there is a basin of water in the cabin to be emptied; the black is called; he goes into the cabin; the door is fastened on the inside; a struggling is heard;—Mr. M'Carthy stays at the door a quarter of an hour, till the black comes out. Now what does M'Carthy say upon this?—"Why," says he, "I should have believed that they had had the carnal knowledge of each others body, if the boy had not so constantly and firmly denied it." Mr. M'Carthy is examined in May, and must have known that the boy had taken a positive oath; that Mrs. Inglefield had been guilty of familiarities with him: yet this very M'Carthy does not believe it. He says, "I would have believed it, if the boy had not so constantly and firmly denied it." So he acquaints his Captain with a thing which he does not give credit to, when he came on board the ship, and drew on by that means the examination of the black. Mr. M'Carthy was in fear of the Captain; he was not in fear of this poor woman; he was applied to, to be an informer, and persons who are so employed must bring something, yet he was afraid of diving into the business. Good God! he, who was the faithful confidential friend of the Captain, should have made an attempt to hinder this; he was not afraid of having ten dozen for opening Mrs. Inglefield's door; he should not have trusted

trusted to his ears, but to his feelings, and that would have been evidence a little stronger; though we know very well, people bolt and lock one another in without any design whatever; that would not have amounted to that proof which they want; but he did not even do that, and he was very glad to get something which he might catch hold of, which something, he says, he did not believe.

I will next go to the black's evidence; his story is the most unaccountable one that ever was heard; it is a story framed by a black, and nothing else. He says, "he went in the year 1783, to live with this lady, who was then with child; she cast soft eyes upon him as soon as she saw the wool upon his head; she squeezed his hard hands; smiled at him; looked all affection: in about two months she was delivered of a child, and in a month after she made the most violent assault upon him: she got him to her bedside, threw her arms about his neck. That may be the way of blacks with blacks, but is hardly ever the case with ladies in England, I believe. This is the account he gives of her ferocity: he always retreats; he is the Joseph of the drama, and she Potiphar's wife.

Now can you possibly believe this? Not satisfied with that, she was continually teasing him when he was dressing her hair (for that was his business); he had an apron on: she would not let that apron alone: he was forced to enter into a treaty with her, as one great power does with another. "If you will let my apron alone, Madam, I will dress your hair, or else I will not."

So there was a treaty for fourteen months together upon this subject. This is extravagant to the last degree: it appears to be fabricated; I don't say how; I think this is hardly possible; stipulation after stipulation; the black attacked, and the black resisting these attacks. What does an experienced sea-chaplain say to this? a man of as much knowledge of the world as of divinity, I believe. Says he, "this is *too little*, Sir, or this is *too much*, for it is the most inconsistent account I ever heard in my life." This is the man of God, that is called upon in order to examine the boy who said so; and said he to him, "nothing is more probable, than that this boy, if once worked up into this story, should never deny it while he is rated on board the ship, and while under your power." Certainly it was improbable to the last degree.

Sir, I am not afraid, as I said before, of these depositions; they are depositions that work a defeazance of themselves; each of them corroborates the other in destroying what they are brought to prove: I am persuaded it is impossible the court should believe them.

Now let us see what the progress of this business is from beginning to end.

You have evidence, and, I think, strong evidence, that the Captain began with shewing the boy, that whatever might happen hereafter, he should not be very much displeased with him.—
 "Take liberties," says he, "with your mistress
 "—I will bore a hole, and will look through."—

There is no man in this room, who, if he had an intrigue with a man's wife, would be afraid of the husband, if the husband was to say so to him. "I will bore a hole; you take liberties with your mistress while dressing her hair, and I shall look through this hole; and then every thing will follow to be sure just as I am desirous it should."*—This does not do; for as there never had been any freedoms taken, the boy was afraid, I suppose, of being knocked down immediately. That I take to be the reason, why he did not take liberties with his mistress—he dared tell his master to his face, I cannot do it—he had fairly promised him—he failed, and his master was angry with him to a great degree for not doing this. That measure not succeeding, the Captain has recourse to M'Carthy: he is ordered to watch; he does watch in the manner I have mentioned, and that draws the business on; why then you have over and over again by so many witnesses, that I will not repeat, the mode and the manner the Captain took with the boy after M'Carthy had given him that information. In what manner does he behave? "You would not take these indecent liberties; but you have kissed my wife; you have laid with my wife." "Sir, I have not." The moment the boy denied it, the

* The black has not upon either of his examinations said a syllable of this transaction, or any part of it; and it appears, by comparing the evidence of different witnesses, that he never saw his mistress after his master had first taxed him with what she is charged with.

Captain was in a passion, that indicated that he did not want him to deny it;—there were chains, and dozens, and every thing against the boy, if he denied it.* When the Captain said, “with these eyes I saw it;” then the boy trembled, and he dared not deny it. To say to a captain of a man of war, a monarch and a despot; “Sir, you lie,” (for it would have been nothing less) he dare not say that; he said all he could say; “indeed it is not so,” but then being over-awed, considering who it was; his situation on board the ship; used to the habit of a slave; in fear of being sent back again to Africa: why a white boy would have been intimidated under these circumstances; but a negro certainly must be in a worse situation than any body else. The boy is desired to remain in the same story, and he gives him a guinea; but seeing that he had done wrong in that, he takes it away, and gives him half a crown. Why did he so? Because he considered it thus, it would shew my satisfaction—my—I don’t know what—not my forgiveness—but it would shew you have done a service for me, and that I rewarded you for that service. Then is it to be wondered at, through the train of examinations, that this boy is never in any fear after that? I believe what the gentlemen say, that the boy did go on glibly with the story; he had told it over, and over again; he had fabricated it once, which

* The black declares when examined, (*produced by his Mistress*) on interrogatories put to him, that no threats whatever were made use of to him.

makes a thing fixed in the memory: he told it freely; the Captain continually telling him, "stick to this story;" and he did stick to it handsomely, till he came to be examined at Rochester, before Justice Pilcher. But let us see through what training this boy passes. Upon *the 21st of December, he is examined by Mr. Brett, and the Captain is present during that examination*,* who behaves wonderfully well, in Mr. Brett's opinion; but, well only considering the circumstances: Mr. Brett qualifies it that way; he appears vastly agitated, as if he had known nothing of the business before.

Again, upon the 27th of December, Mr. Martin is sent for, the Captain *is found to be upon deck, with all his officers;† the boy is examined*; the Captain appears agitated to a great degree. Mr. Martin says, the boy went on with his story very well, and, I dare say, Mr. Martin gave him all the advice that was proper.

Then comes on the great examination at Rochester, before Mr. Pilcher, Mr. Parker, and the Rev. Mr. Jones; that is the 2d examination, which happens, I believe, to be the next day: upon the 25th December, the fourth and fifth examination. Upon the 30th of January he was examined again before Mr. Brett, Mr. Rogers, and Mr. Wood, and then from that time till the time of his examination, on the 17th of May,

* This was the time the black made his first confession, as will appear from the evidence.

† No such thing upon evidence;

there is a cessation; he is either taken care of on board, or under the immediate eye of his master, the Captain. After that, he was examined at Doctor's Commons; then they tell you, the Captain did not think it proper to keep him any longer in his service.

You find four or five witnesses speaking of the uneasiness this poor boy continually expressed of his being haunted by his evil genius, till he discovered the whole truth voluntarily. Nothing could constrain him to tell this story to the men servants, with whom he lay in the same bed; nothing could constrain him to tell the story to Mrs. Pleasance, or to another maid-servant. I don't know what fascinating power Mrs. Elizabeth Wells might have, but there is none proved against her; nothing illegal against her; there is no witchery proved against her, except what is common to other women; no improper management; no improper applications to him whatever. Justice Pilcher says, she is a light girl; what he may know of her, and what may have passed between him and her I can't tell; but there is no evidence of that kind from any other witness. A fellow-servant says, she is a girl of a good character, and another witness says the same; but this insinuation does not at all relate to her being addicted to falsehood. What does she say? This poor boy went to her, teased, plagued, harassed her till she would write, or send to her mistress. Her brother says, the boy came day after day; "Have you told my mistress? why don't

don't you write to her?" The girl, like a grateful servant, went to her mistress; she had, very likely, offered her her service before; I don't know that that is in proof, but if it was, I don't see that it would hurt her evidence in the least; it would only shew her to be a good and grateful girl.

The story certainly comes out as soon as ever it can come out; for, in reason's eye, it is impossible that this man, under the shackles he was in, should dare, after he had made this charge, and been intimidated, even before his examination; for if I understand Mr. Thompson's evidence right, he told him he was intimidated, even at the time, the Captain's lash was over him.* Thompson is a servant to a Mr. Hamilton, at whose house the Captain lodged. Thompson and the Captain's servant met together, and the boy told him, in confidence as a friend, the miserable condition which he was reduced to, either to betray his mistress, or forfeit every thing in this world; the favour of his master, and, in short, his happiness and his liberty. If I am right in this, could a contradictory evidence come out more fairly.

I would now mention what I shall call the great examination, that is, the examination at Rochester, upon the 28th of December. The

* This *Mr. Thompson*, was a black, or mulatto, and was hired by Captain I——d, upon John Webb's dismissal; but not coming to his place at the appointed time, was immediately sent away when he made his appearance, and then became acquainted with Mrs. I——d's mother, whom he in his evidence confesses to have received money from.

boy is examined there in a grave, serious manner, before two friends, staunch friends—I am sorry to say, I think too staunch—Mr. Pilcher and Mr. Jones, as well as Captain Parker. Now what is the consequence of that examination? The boy goes on extremely glibly and well, and even deceives Captain Parker—Captain Parker conceives the highest displeasure against this poor lady. But there is an act to be done—the book was to be kissed—if any other ceremony had been to be performed, it is the same thing—an act strikes one's mind stronger than a word. When he was taking the solemn oath before God, which had been only explained to him; when he comes to do an act—to kiss the book, the reverend gentleman says he was terrified to the last degree—he trembled at every nerve—he shook at every limb.

Now I am going to stand upon another ground. I say, that the boy is as good a witness, and I think I can almost go farther, and say a better, than if he had not been guilty of what the gentlemen will call perjury. Every one will admit, that an oath extorted from a man is not binding, is no obligation; the moment he got at liberty, he told his story truly, as it was; I believe he did before; but however, telling it afterward is enough for me.

What should he be afraid of during his examinations on board the ship, when he was speaking for his master, though it was on board the

the ship, there was no reason for him to be intimidated; if he was afraid of any thing, it was something distant that the person had told him, which he did not care a farthing for: but his master was before his eyes, and he was afraid of him:—After his behaving in such a manner, upon my word, I am almost shocked at the conduct of Justice Pilcher to give him the oath, after he saw all these symptoms.* I don't suppose any judge in the kingdom would have tendered an oath to a man, when he saw him in the confusion in which this boy is described to be—the boy did swear;—he saw slavery, chains and whips before his eyes.

This boy is an interested witness. If a man for interest takes a false oath, and he afterwards says he is sorry, and repents of having sold himself to the devil—the consequence, had the black been in that situation, would be this, he would be reduced to a *caput mortuum*—to nothing—lean neither this way nor that way, but that is not the case of this black—he is a good witness—he is to be credited as if he had originally said, “my master has bid me practise with my mistress, and then he would be the first to accuse her;” he has

* The deposition was never produced at the Commons; after mentioning a variety of indecent practices, it concludes, “that this deponent further swears, that being a black servant, he had such terror and dread upon him, that notwithstanding the said advances made to him by his said mistress, he never had any carnal knowledge of her.”

said that now, in as strong terms as if he had said it at the first, and he has said it strong enough for the present purpose. I hope it is not—sometimes I am led to believe that it is not—I don't affirm either that it is, or is not! but if not, it is a most happy event for Captain Inglefield, that this business has been enquired into in the manner that it has been, and I will tell you why:—Perhaps it will be said, Mr. Mills would not suffer this lady to enter into a compromise, or rather that he advised her against it: If a compromise had been entered into, the Captain could never have wiped off this imputation from his lady. But I consider him to be what the witnesses say he is, a man of honour; and I am unwilling to believe what I was forced in my condition as a counsel to say, that the circumstances led to; but there is one way of shewing the world that I have made false deductions, and a strong way of shewing it. It is a happy circumstance that Mr. Mills acted as he did, and that the lady has brought forward this business: because I really believe, if any of the Captain's friends are here now, they will be able to convince him, what he never would have been convinced of; if the business had been settled out of court, he would never have wiped it out of his mind: and now he has the evidence of his own servants, and other persons upon oath—he is, I dare say, now convinced. I am sure he has reason to be convinced in the strongest manner, that every imputation upon her honour

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is groundless; and from that being the case, I should not wonder if they and Mr. Mills spent a happy evening together—I say, I should not be at all surpris'd to hear it: and therefore, I make no prayer at present, as it is very likely the court may not be under the necessity of making any order at all.

Dr. C O M P T O N.

S I R,

I AM of counsel on the same side with Dr. Harris.

This case is attended with such circumstances, that every one who has seen the evidence in it must feel much concern, that a poor ignorant black should be induced to perjure himself; by whatever means it happened, whether by design, by accident, or by the operation of fear, which is natural upon the mind of one in his station; it is not absolutely necessary that there should be ground for that fear; if it appears that he was actuated by fear, there will be no difficulty in unravelling this business.

I am glad, for Captain Inglefield's sake, that it is proved in evidence, that he is a good, tender, humane husband; that in general he behaved perfectly well; but does that secure against impressions of jealousy? certainly not. It is allowed by every writer, that the stronger the affection, the more liable is the mind to the impression of that dreadful passion which produces so often fatal effects: if Captain Inglefield was, as I think it now appears that he was, actuated by that unfortunate passion, he would
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accept of no answer but that which tended to confirm it.

“Trifles light as air,
“Are to the jealous confirmation strong
“As proofs of holy writ.”

And too true it appears in this case. He used to question the coachman, who used to meet him with the chariot at Deptford, in his way home, “who had been there—what gentlemen visited —how long they staid—and whether they “were alone,” and a variety of such sort of questions; but not a single syllable about the black, which is very extraordinary indeed. The first mention of any idea, of any apprehension respecting the black, you find is to Mr. M‘Carthy; they are not at all precise in point of date; but it must have been somewhere in the month of December, for Mrs. Inglefield was not on board all the month of November; at least, she could not be on board till the 27th or 28th, that is in evidence from Mrs. Smith her mother, with whom she was the major part of that month: on the 21st is the examination. I am sorry to see such an extra-judicial examination, it naturally leads to very bad consequences: for the black having once said it to his master, he was pinn’d down. The witnesses tell you, that upon his having said it, Mr. Brett was called into the cabin, then the black having said it to his master, to whom (as Dr. Harris observes) it was impossible to say otherwise, when he looked
sternly

sternly at him and said, "I saw it!" Dared this poor man tell the Captain of a man of war, that he did not see it, for that must have been the effect of a negative on his part; he must have said, you did not see it. Would that be suffered? can it be conceived that he should act so under the impression made upon him in this manner? You find Mr. Martin, in his answer to the interrogatory, says, he thinks it likely that the black would persevere while in Captain Inglefield's service and rated in the book, and he observed, there was a very great inconsistency in Webb's evidence: if the Captain had not been under that unfortunate prepossession, he must have himself seen the glaring inconsistency; but there is a circumstance I would observe upon: Mr. M'Carthy says, he was ordered to watch, and did watch: Webb says, upon his first examination, that he met Mr. M'Carthy as he was coming out of the cabin; who asked him what he had been doing; and the deponent told him, "nothing particular."

Now, if upon coming out of the cabin, he had been so agitated, as Mr. M'Carthy represents, is it probable that Mr. M'Carthy would have acted in the manner he states? If the black was running away from his mistress at the time, if he had been taking liberties with her, then was the time for Mr. M'Carthy, the Captain's confidential friend, who was set (I won't say as a spy), who was set as a watch, to have questioned him; when the boy said, "nothing in particular;" was it not natural for him to have said, Why, what was that noise

noise I heard? Placed on purpose, as he was, by Captain Inglefield, he must have pressed the boy further; but not a tittle comes out then. In fact, nothing comes out till the Captain looks fierce at him, and stamps, and swears; it is no reflection upon the Captain; it was natural; he was prepossessed himself with the truth of the charge, and he enforces it by means which were very natural; agitated himself, he was not upon his guard very strictly; but he had the power over this boy, for the boy swears, that he knows very well the discipline, that it was very severe; he was not a free agent while in the ship. What does he do? as soon as he gets away, he lies with one man and with another, he unburthens his conscience greatly to these men; to close the whole, he persisted, the gentlemen will say, in the same story, because in their interrogatory, which they read, it is stated, that Mr. Pilcher took an opportunity of asking him several times, whether what he had related was true, and he persisted in it; but it is to be remembered, he had taken a solemn oath before Mr. Pilcher. I think Mr. Pilcher's questioning him, looks as if he began to doubt whether he had said the truth; for why should Mr. Pilcher, when the man had been sworn, and the nature of the oath so fully explained in Mr. Pilcher's presence, question him in this manner in conversation, whether what he had said was true or not?—That is inconsistent and absurd to the last degree, it looks as if Mr. Pilcher himself began to be staggered; but Mr. Pilcher was his superior, he was under the same awe.—But

what can the gentleman say to Mrs. ———, she was reading the bible; it came out casually; there was no plans laid; he had not seen Elizabeth Wells at that time, nor Mr. Mills; and that is material;—it was a sudden impulse, and we know the nature of mankind is such, that many murders have been discovered by a sudden impulse. A man is struck, and confesses a murder that had been committed years before, he was struck with the solemnity of the bible, and he asked the question. Free from the impression of fear, he declares then in what manner that had passed. They would have him considered as a servant that was free; you observe what sort of station he is in; he had no wages; he had merely pay as a seaman; was under naval discipline; and not only that, but he was obliged to find his clothes out of that pay; he was severely beat for pawning a great coat, which he had bought himself out of his money; which he pawned for the purpose of becoming a Christian, in order to pay the fees. The beating might, I think, very easily be exaggerated, and his pawning the great coat be an additional circumstance, which might impress itself upon the Captain's mind, at that time there used to be an idea pretty prevalent, that when a black was made a Christian he became a free man; the idea might be impressed upon Captain Inglefield, that he had made himself a Christian merely to exempt himself from his power.

I will not go over the evidence particularly that Captain Inglefield said, this and the other, it
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is sufficient for my purpose, that the black has contradicted himself at different times, and that therefore he is totally out of the case.

Since I have had the honour of attending these courts, of the many, many cases I have known; I never knew an instance of a *particeps criminis* (admitting for a moment, that he had sworn positively to the absolute consummation of the crime;) I say, I never knew an instance of a *particeps criminis* standing alone; his evidence is admitted as subsidiary, but never standing alone; that is, I am sure, the law of this court as it has been determined again and again in many cases, which I need not go through, but I particularly remember one—the case of Wright and Wright, which was of an elderly woman, with an apprentice of about eighteen; he swore to a great variety of facts, and he had talked of it to some of his companions, but still it made but one witness; the judge said, that if it had gone through twenty mouths, from his having told it to twenty people, still there being nothing corroborating, it was but one witness. In this case what is there to corroborate? not a tittle, every thing contradicts; every one of the servants swear positively, that Mrs. Inglefield had an unexceptionable character. There is a person whose evidence will have great weight in this cause: we all know how exceedingly careful ladies are to avoid ladies who are suspected of infidelity to their husbands; and, Mrs. Parker, in her evidence, swears, that she did not believe the report: She enquired as to the truth of it, and if she had believed it she would not have visited

Mrs. Inglefield, but she did continue to visit her : That, therefore, is a strong subsidiary evidence.

The letter from Captain Inglefield is a very extraordinary one ; it has been gone through by Dr. Harris, therefore I need say very little upon it. According to that letter, every thing passed at Singlewell ; no watch set ; not one domestic servant desired to watch her : the coachman was questioned about a variety of persons ; not one servant told to observe the black ; but it is in evidence, that so guarded was Mrs. Inglefield, with respect to the black, that when she was alone, he did not wait at table : That is a circumstance directly contradictory to any idea of indecencies being practised by her ; because, if he had waited at dinner when she was quite alone, she was master and mistress too ; she had none to controul her.

It is proved, that Mrs. Inglefield shewed great affection towards her husband while he was at sea ; she had a fit of sickness upon the news of his being cast away in the Centaur.

But courts don't fit here to determine upon mere circumstances. The question is, whether, in fact, adultery was committed, for the plea in bar against a restitution of conjugal rights, is, that she committed adultery. Now there is not a syllable said of adultery in the evidence before you ; it was necessary to admit the plea in bar : there was a great deal of examining of the black before one justice and another ; but still, if he had sworn to the fact, the criminality, which was pleaded in the libel, it would

would not have been admissible, it being now in evidence from the black himself, that there was no criminal conversation; that is likewise in proof from the letter, for therein you have the Captain's own confession, that there had been no criminality: then the charge is at an end. "He," the black, "says, he never was criminal with you, but that you practised every sort of seduction," but that still there was not that crime for which the court pronounce a sentence of separation.—There is no medium—I have heard that doctrine in a variety of cases; I had the honour of attending in Sir John Elliot's case, which was a suit for restitution of conjugal rights brought by the lady, and a plea of adultery in bar, by Sir John Elliott; and it was there contended, that though there was no restitution, there could be no decree of divorce, but the judge said, it was law universally; that there is no medium, the vinculo remaining, there must either be a restitution, or there must be a divorce; there is no medium.

Captain Inglefield then having failed in proof of what, in that letter he undertook to prove, as well as the suit and allegation, that there was a criminal intercourse with this black:—having failed in that proof, we are, I humbly conceive, intitled, in point of law, to the restitution which we have prayed. And, I think, by praying it we are doing great service to the parties. I wont lay any stress upon what Mrs. Parker says, that when she proposed an accommodation;—I could wish for all their sakes that they had acceded to it,

except for one consideration, namely, that Captain Inglefield now, from having heard the evidence, may be convinced that his wife is unspotted, as the witnesses say, innocent as a child unborn; that there sticks no dirt to her from this; that even fond as the world is of scandal, you find that the report in the neighbourhood was not believed; the ladies themselves, who are too apt to depreciate each other, you find still esteemed her; they visited her, and considered her as in no respect guilty; they would not give credit to a word the black had said; because I believe no woman who values her character would associate with one who had been guilty of even so much as the black mentions, and that is taken off by the circumstances—It is taken off by the situation in which the black then was; he was under the impression of fear—no matter whether justly or not, if it actuated his mind. You find when he was to kiss the book he trembled.—What Captain Parker says upon that is extremely material—Captain Parker was there in order to attend the examination—Captain Parker saw what the justice, Mr. Pilcher, would not, or could not see; but there was an examination before Major Wood, Mr. Rogers, and Lieutenant Brett.—I don't doubt but they thoroughly believe what they said; they were impressed with it; but the force of prejudice we all know is such, that an impression once made is not easily wiped off; they are indisputably good officers, but they are not lawyers; they are not in the habit of canvassing evidence; they don't weigh the circumstances, indeed they were

not apprised of the circumstances: were they apprised of what had passed in private between Captain Inglefield and the black? No, it passed between only Captain Inglefield and the black himself; that impression operated throughout; having once said it, he dare not go back; no wonder then that all their extra-judicial examinations were every one consistent with each other, he must persevere in the same story; and when he comes to make a candid confession, he was under no obligation to his mistress.

Now, consider where all these witnesses are collected from; a desire to right innocence could be their only motive. Mrs. Inglefield, a married woman, with a small allowance, 100l. per year I think. They all swear they are disinterested. How should she collect such a number of unbiassed witnesses, if it was any thing but the force of truth which brought them before this judicature. Mr. Pilcher, this grave, this serious administrator of justice, enraged at the boys throwing stones, he jumps out of the carriage and beats one of the boys, and that is the account that is given. It was not right to charge Mr. Mills, a person whose character is fully spoken to, not only by Justice Pilcher, but by Mr. Ruffel and Gillam; they give him a most unexceptionable character; and is no body to step forth for the protection of innocence? If Mr. Mills was convinced, was it not proper for him to do it?—Is a charge a proof?—Is a poor woman to be harrassed upon such slight grounds? Prepossessed himself, convinced from her general conduct—and is that never to be taken into consideration?

fideration? certainly general character, whenever there is the least doubt of the proof, weighs extremely with every court; and there is a circumstance strikes me, I am sorry to say that it does not pay a great compliment to his discernment, but he was blinded with jealousy, or else no person whatever, who had received an anonymous note, would endeavour either to trace it, or pay any regard to an information which the persons are afraid to step forth and avow.—Therefore, it was either some secret enemy of hers, or some invidious person envying their happiness.

The Captain says, he thought her conduct arising from curiosity: that was treating so serious a subject in a very light manner indeed, and not consistent with the general character of Captain Inglefield, and the earnestness he has shewn in this business.

As to the matter of ringing the bell, it appeared suspicious to him no doubt; the note might inform him of that circumstance; but when it came to be cleared up, nothing is so natural. The window was left open, Elizabeth Wells tells you Mrs. Inglefield was frightened, she came down stairs; not a word was said about Jack. Every part of the letter is so fully disproved, that the witness himself, Webb, is rendered totally incredible, so as to operate for a divorce: If he was a credible witness, he would be but a single witness; but being a *particeps criminis*, if what he had said was true; if he had even spoken to the consummation of the fact, yet being unconfirmed,

confirmed, his evidence could have no weight. There is not, even in the letter, the charge of adultery; therefore the plea, and the charge in the letter do by no means accord. The court is to determine whether it is adultery or not.—The court is to decide whether there shall be a decree for a restitution of conjugal rights or not.—The court has repeatedly declared that there is no medium, therefore there must be a restitution; and not only a restitution of conjugal rights will be the consequence here; but I hope a return of affection, and an obliteration of every painful reflection, which anonymous notes, or imagination, may have created in Captain Inglefield, and that they will henceforth be as happy a couple as they appear to have been before this unfortunate affair began.

DOCTOR

DOCTOR WYNNE,

THE KING'S ADVOCATE.

SIR,
THIS is a suit which was brought in Easter Term, 1785, by Mrs. Ann Inglefield, against John Nicholson Inglefield, Esq; her husband, for the restitution of conjugal rights; and unless he can shew a sufficient and legal justification of himself, in *abstaining from Cohabitation*, as I shall call it—*Desertion*, as the gentlemen on the other side of the table call it, he is bound to cohabit with her.

On the other hand, if he should be able to prove what he suspected; I think I use too slight a word;—if he should be able to prove what he has seen with his own eyes; in that case it will appear to the court, and to every person who hears any thing of this transaction, that he had but too just and too melancholy cause to avoid cohabiting with his wife; and that he is entitled, I hope in point of law, I am sure he is upon every other consideration that can be conceived, to all the relief that the court can give him, and as far as this court certainly can go, to separate him from this woman for ever.

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The case that he has stated is in two words this; That after having been married to this woman for between twelve and thirteen years, after having had four children by her; having treated her in a very affectionate manner during the whole of that time; she cast lustful eyes upon a negro lad that he took into his family; that she began with using more distant advances; but in no very considerable length of time, that she used the most abominable, the most nauseous means to seduce him to gratify her wicked lusts; and this coming to the husband's knowledge has given occasion to the present suit.

To this Mrs. Inglefield has replied; that Captain Inglefield does not possess any of the qualities of a good husband, but on the contrary, that he has conceived in his mind a wicked design of deserting a woman, who hath performed all the duties of a good wife to him during all the time of their cohabitation; and that for this purpose he has trumped up this vile story, and suborned a witness to support it.

These are the respective cases of the parties. It is unquestionably a most shocking charge for a husband to make, and for a wife to defend. It is not, I conceive, an immaterial part of this consideration, to observe how this matter is brought before the court; because the gentlemen have been obliged to do it; every person who hears it undoubtedly is offended at the very suggestion that has been made. How comes this matter to be brought before the court? It appears by a letter exhibited in the cause, and which was annexed to Mrs. Ingle-

field's allegation; that upon the 25th of December, 1784, she received a letter from her husband, of which she gives this account. She says that he had left her a very short time before at Chatham, and that to all outward appearance they parted in a very affectionate manner; that he then told her she should go to her mother's, who had a house at Greenwich, and that he would come there and pass the Christmas with her; that instead of this, he went from Chatham to London, and wrote this letter, which she received upon the 25th of December. That letter I mean to rely upon, as I conceive it to be a very material part of this case. The doctor on the other side of the table, said he was threatened with it, but that he was not at all afraid of it: he too has pointed out circumstances in that letter, upon which he thinks depend a part of the justification of his client.

What I collect from that letter in general is this—that Captain Inglefield did not act an insidious part—that he did not go about to relate his suspicions to one and another of his friends, and her acquaintance, or invent those stories which they pretend he fabricated. He did not indeed trust himself, by word of mouth, to make the charge which has now come out, but he wrote her a letter, in which he tells her that he has received an anonymous note, acquainting him with that which indeed he was but too well informed of before. He says positively that he had himself seen her kiss this black; that he abstained from suffering this matter to break out

till he had received this note, by which it appeared that his dishonour was got abroad; that it was now impossible to keep it within the walls of his own house; that it became necessary for him to take some step in it; and that therefore he examined the black; and he relates in substance very nearly what the black has said in his deposition.

This letter was exhibited by Mrs. Inglefield herself, annexed to her allegation, and therefore there is no need of any proof of it. One circumstance the doctor pointed out, and I thank him for it, that it appears that before this letter was written, there must have been another letter written by Captain Inglefield, and received by the lady. Where is that other letter, says the doctor? How comes it you don't hear of that letter at all? Why, Sir, you do hear of it, by hearing, from the deposition of Mills, that he saw two letters. He positively says, that he saw in the hands of Mrs. Inglefield, two letters which she had received from the Captain respecting this matter. One of them, she thought, would answer her purpose better than the other; and one only she has produced. Captain Inglefield has related the matter precisely in the way in which the black servant has stated it upon oath; and he has concluded the letter with all the fairness, with all the openness and candour possible: for he tells her, at the conclusion of it, that the black, in the examination he had taken, had declared that he had never been criminal with her, he was always afraid.

There have been several allegations given in by the several parties in this cause; and in the second allegation of Captain Inglefield, he pleaded that, in consequence of this letter, he very soon after proposed a reference to friends. He proposed that an equal number of friends should be appointed by the parties, and that this matter should be examined into. Sir, that he pleaded—that article you rejected, and very justly rejected, I readily admit, as far as my humble opinion goes; and the reason is, because that when the matter came into court, when it became a question that must be examined regularly, upon *allegatum et probatum*, then it was immaterial for the court to be acquainted with all the transactions, with all the overtures which had passed between the parties and their friends; but still I have a right to state, and I conceive it is very material for my client, that you should understand the temper, disposition and conduct of the parties; that he did plead, and offered to prove, that this matter was not voluntarily brought by him into a court of justice, but that he was desirous there might be friends appointed on both sides, to examine the evidence; and, in short, to do whatever they might think fit, in consequence of it. It is not suggested, it has never been pleaded. It is now, indeed, disavowed by the doctors on the other side, that Mrs. Inglefield ever took any step of this sort. She receives this letter, in which her husband charges her with having seen her kiss her black boy, at the time he was dressing her hair. She receives a letter, informing

informing her of the several circumstances with which he charges her, relative to her behaviour with this black boy. She disdains to consult her friends: she disdains to desire her husband to inquire whether he may not have been deceived; whether there may not have been ill offices done between them; and she insists, that he shall either take her to his board, and take her to his bed again, or else that he shall have the charge thrown upon himself, of bringing this vile and nauseous story into a court of justice.—

I will not take upon me to say, that a woman who could act in this manner, must be presumed to be of a disposition wicked enough, and impudent enough, to do any thing she could be charged with: that would be going rather too far: but I will take upon me to say, she must be a woman of a very extraordinary constitution: that she must be a stranger to every feeling of the delicacy and modesty of a woman: and, it appears to me, that her conduct has laid some foundation, at least, for the court to believe the charge that is now brought against her. She is not afraid of the story at all: she has no desire to have it concealed that she has been charged with this, and that there should be such an examination as there has been upon it. I don't at all wonder at that; for it has been made as public already, as newspapers can make it. And, I think, it pretty plainly appears in evidence, by what means that has happened; because one of their own witnesses has charged it upon Mr. Gillam Mills, of Greenwich, and has

has proved the fact. However, we are now forced into this business; and it is become absolutely necessary for Captain Inglefield to give in the allegation which he did, charging his wife, which he undoubtedly has done, with adultery; and to examine such witnesses as he has been able to produce, in order to establish that fact.

Sir, you have had a great deal of your time taken up in laying that evidence before you; and now, that it is my duty, as counsel for Captain Inglefield, to represent the case in that light in which I conceive it must appear, I will desire to submit to you three considerations.

First. What proof Captain Inglefield has made of the fact.

Secondly. What effect that proof would have, if uncontradicted. and

Thirdly. With what effect it has been contradicted.

These are the three considerations under which I will desire to argue this case.

Captain Inglefield, in his allegation, has charged, in general, that case which I have alledged—his wife's conduct with respect to his black servant, who lived with him at the time; and has inferred from thence, as I think he could not possibly avoid doing, that she had committed adultery with this lad.

In order to prove that charge, the boy himself has been examined, and the account he gives is shortly this:—He says that he went to live in the family at Greenwich, about two
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years ago: that from his first going into the family, his mistress took more notice of him than he thought became her. He says she used frequently to smile upon him; to take hold of his hand, and squeeze it gently: that in two or three months time she was delivered of a son; and about a month after that, as he was one day sweeping the hearth, she put her hands round his neck, and kissed him. He says, the next day, as he was dressing her hair, she put her hand under his apron, unbuttoned his breeches, and handled his privities. A day following that, she called him into her bedchamber, as she sat upon her bed, pulled him upon her lap, began feeling his privities upon the outside of his breeches, and asked him if he could do any thing; and told him that he need not be afraid of his master, for he would know nothing of the matter. He speaks of her having frequently, upon subsequent occasions, continued these practices, speaking of what passed at the house at Singlewell. And he farther says, that one forenoon, about ten days after his master and mistress went on board the Scipio, that his master having gone on shore, his mistress called him into the cabin, and ordered him to empty a basin of water: that she then shut the door, fastened it on the inside, and then she put both her arms round his waist, kissed him, and attempted to unbutton his breeches. Upon which he got out of the cabin as fast as he could.

This is the account given by the witness, of what passed at different places. At Singlewell,
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the account he gives is, that the practices of this kind lasted twelve or fourteen months. The other is respecting this single fact. The circumstance of what passed on board the vessel, is confirmed by M^cCarthy, to a certain degree unquestionable.

Mr. M^cCarthy proves, that after Captain Inglefield and his lady had been on board the *Scipio*, and the time he describes this, brings it to about the month of November; that the Captain asked him if he had ever seen any improper familiarities between his wife and John Webb, the black servant. The witness says he declared he never had seen any thing of the kind. But, however, Captain Inglefield insinuated that he had reason to suspect something, and desired that he would watch them; and accordingly, he says, that about a week after that, he heard her one day call Webb into the after-cabin, in order to empty a basin of water. That Webb went into the cabin: that as soon as he got in, the door was shut on the inside: that he staid there for about a quarter of an hour; during which time he heard a great struggling between the lady and the black boy. And the witness does say, that he thought at the time, that they had committed adultery together, and that he should have continued so to believe, had it not been for the frequent contradictions of that fact which he understands to have been made by John Webb.

The practices deposed by John Webb to have passed at Singewell, are, to be sure, less materially

materially confirmed. But they are not absolutely unconfirmed neither. For a young gentleman who was examined, a nephew of Captain Inglefield's, Mr. Thomas Slade Feattus, says, he used to be at the house at Singlewell. He speaks to a particular day, upon which he heard Mrs. Inglefield call John Webb, to go up stairs into her bed-room, to take some plate out to be used at dinner. Accordingly, he says, she went up into her bed-room, and the witness followed her. Soon after that, John Webb came up into the room, when Mrs. Inglefield putting her hand into her pocket, said she had forgot the key, and she desired this young gentleman to go and fetch it; she told him she believed it was in a back parlour. That he went down stairs to look for it, and was for five or ten minutes employed in searching for it; and that having found the key, he went up stairs again, and there he found Webb standing in the room by his mistress.

Now I will consider how the case stands, as confirmed by these two witnesses.

First of all. The transaction in the cabin; as that is most particularly spoken to.

Secondly. Those circumstances which passed at the house in the country.

Perhaps the account that is given by M^cCarthy, or that is given by the other witnesses, taken by themselves, might very truly be said to have nothing in them that is in the least criminal.

The doctor on the other side of the table, thought, however, that it was necessary, and fit

for him, to endeavour to diminish the credit due to the evidence of M'Carthy. I never, in my life, saw a more candid, fair witness, than Mr. M'Carthy is; and, indeed, the other witness; and so is every witness that is examined in this cause, as far as any practice of Captain Inglefield, respecting them, can possibly affect them.

Mr. M'Carthy says, he never before saw or suspected any thing: he relates barely the fact, what he saw and heard; and he leaves it to you to judge, what inference you should draw from the fact: that is the most candid account a witness can possibly give; but if that is confirmed by the testimony of another witness, it will tend strongly to prove the fact. This is the account, at least not of a willing witness for the party for whom he is produced; but rather, as I conceive, of an unwilling witness; for M'Carthy does speak in that kind of way which shews that he was not in the least disposed to establish the fact which he was brought to prove, beyond what the fact will warrant. What is the fact? That Mrs. Inglefield having called the black servant into the cabin, she fastens the door on the inside. Now is not that a pretty extraordinary circumstance? I understood the doctor to say, it is a common thing for a lady to lock the door when she calls her footman into a room; that it is very common to struggle, and make such kind of noises, as that a man, who is standing on the outside of the door, shall think that this is precisely as if these two persons, upon the floor, or a chair, or something of that kind, were doing what men
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and women are apt sometimes to do in the dark, and when every body else is kept out. Mr. M'Carthy says, that is the impression it made upon his mind; and what strongly increased that impression was, that when the lad came out, he looked frightened and scared. Does not this confirm the evidence that has been given by Webb himself, respecting this lady, on other occasions, that she used to be guilty of such practices—that she used to endeavour to unbutton his breeches—that she used to kiss him—that she, in short, made use of all those kinds of attempts to seduce him, which he has related in his deposition? It is confirmed in this way by a witness speaking to the fact, declaring, that he knows nothing but the mere fact, as it is related. In my apprehension, an account given by a witness who must know what passed, and confirmed in the way that this is, by a person who was on the outside accidentally, is as strong a circumstantial confirmation, (certainly it is no more than a circumstantial confirmation) but it is as strong a circumstantial confirmation, as could possibly have been given.

The other, to be sure, is not so strong; and it is a story which, if taken by itself, without being connected with any other part of the history of the practices that this lady had formerly used with her black servant, would amount to nothing; it would be a story perfectly indifferent. But when you come to consider that her way was, as is deposed by Webb, to endeavour to get him into her bed-chamber—when you observe that she

had called this lad up into her bed-chamber, in order to take plate out of her closet, and had not carried the key of that closet with her—when you observe that the witness who relates this fact, goes up into the room, not being called by Mrs. Inglefield—whether it was out of any curiosity of his own, or any suspicion: if he had any suspicion, he most carefully conceals it: he denies it, indeed: for the young gentleman deposes, in the fairest manner possible, much to his own credit, and the credit of Captain Inglefield, who is his relation, and, as such, must be supposed to have an influence over him. The lad says, he never suspected any thing—he knows of no ill-conduct in his aunt: but the fact he speaks to is, that this black servant was called up into the bed-chamber by his mistress. The witness follows of his own accord; and when she saw him in the room, was it not a pretty odd choice, there being an errand to be done down stairs, that she should rather send this young gentleman, than the black, and choose to keep the black in the room along with her, while he was gone down to search for this key? Surely that is not a circumstance totally immaterial: it is that kind of accidental circumstance, that, in my humble apprehension, does strongly tend to confirm the evidence that is given by John Webb, of the improper behaviour of his mistress, whenever she could get him alone, and use practices of this kind, for a very great length of time.

But he does say, that, in fact, he never was prevailed upon to be criminal with her. I con-

self that evidence makes much the same impression upon me, which it made upon the old Major of Marines, Mr. Wood, namely, that he has told the truth, but not the *whole* truth in this matter. I can scarce conceive it possible, in the nature of things—credible, I am sure, it is not, considering all the circumstances—considering the character and the facts, as they are related by this John Webb, that the whole should have broken off unconsummated, in the manner that he has stated.

Now, taking for a moment the fact to be, that Mrs. Inglefield did use these practices with this black boy, I believe no one will think that it stopped with her: no one will suppose that she had all this pleasure in raising her passions, and that it never entered into her mind to gratify them at all. Therefore, I conceive, if the facts are as John Webb has related them, nobody will suppose, but that if Mrs. Inglefield had it in her power, the carnal act was committed between them.

Now let us see how it was on the other side.—This is a lad of about nineteen years of age; a native of a country, the constitutions of the inhabitants of which, are generally supposed to be as warm as the climate. Now can it be supposed that this young man, who, it won't be suggested, had any religious scruples: it won't be suggested that he had any moral scruples to restrain him, upon an occasion of this kind. He had all these temptations; he had all these opportunities; his passions were frequently raised to
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the height ; but when that was done, he always resisted the temptation : he always declined : he always got him out : and went wherever he could, in order to avoid his mistress. Can that be credited ? And yet that is the account that is given by this witness.

It seems to me much more probable, that the fear, which is represented as the motive that prevented him from actually consummating this act, should be his motive for denying it ; and that though he would relate the other part of the story, he would not take upon himself such a degree of criminality, as should subject him to the resentment of Captain Inglefield, whether he had been his master or not. The resentment of a man of that kind, he must know, was very much to be dreaded : conceiving from the impressions which the situation would naturally make upon any man, it is much more probable that fear should have induced him to conceal that part of the story ; for he has taken no part of the crime upon himself ; it is all the temptation that was used on the part of Mrs. Inglefield, and rather merit on his part ; for it is all resisted : and, to be sure, he positively says, the crime actually was not committed.

Compare this case, with the ordinary cases of adultery which come before the court. What does the court proceed upon every day in these cases, and pronounce sentence of separation for ? It is that a man and a woman were shut up together in a room, privately, and that there

there were persons at the door who heard noises, strugglings, shriekings :—circumstances of that kind, from which the court always does infer, without inquiring any farther, that an act of adultery was committed, unless there should be any reason to suspect collusion. Now, I don't suppose it will be suspected here was any collusion between Mrs. Inglefield and the Captain, or between Mrs. Inglefield and this young man ; or that she was not very sincere upon this occasion : nobody will doubt that. Then I submit that this kind of evidence is abundantly sufficient to have founded a sentence of separation, by reason of adultery, supposing that fact to be established.

Sir, I need not put you in mind that you are not now desired to dissolve this marriage. You know very well that you cannot do that ; that the very utmost the court could do, supposing the evidence to be as strong as a case of this kind possibly could be—the court could go no farther than to decree a separation from bed, board, and mutual cohabitation, until the injured party consented to cohabit again ; because that is always made a part in every sentence of separation.

It has been said by the doctor who spoke last, that there is no medium—that the court always does, and always must, either pronounce for a restitution of conjugal rights, or decree a separation. I know very well, that although this began as a case of restitution, yet, if Captain Inglefield, the party who is proceeded against, is able to establish

establish his case, and to prove that there had been such a conduct on the part of his wife, that he is not bound to cohabit with her. I know that the court might in that case, and has in an hundred instances, pronounced a sentence of separation. But that that is clear law, which the doctor has taken for granted to be so, namely, that the court must either admonish to restore cohabitation, or separate, is farther than I can go. I don't know that that is perfectly clear. I remember a case in which the contrary opinion was held by a Judge we all knew, whose experience and learning we were all extremely sensible of, and that is the late Sir Edward Simpson: there was a case before him, of *Holmes and Holmes*; it afterwards went by appeal to the Court of Arches, in 1775. I remember the case perfectly in both the courts: that was a case of restitution of conjugal rights, brought by a husband against his wife; the wife, in that case, gave an allegation, in which she pleaded, that the husband had, in many respects, imposed upon her: that he had pretended himself to be a man of fortune, when in truth he was not: that she had lent him money, of which he had defrauded her: that he had become a bankrupt: that he had deserted her, and remained absent from her (she did not know where), for more than a year, and then he returned, and insisted upon her cohabiting with him; and used, or was endeavouring to use, force for that purpose.

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That allegation Sir Edward Simpson admitted ; and, I perfectly remember, he said (I have something better than a mere recollection, because I find I wrote the words down at the time), that although there might not be a foundation in this case for him to decree a separation, by reason of cruelty ; yet there might be sufficient reason for him not to decree a restitution under the circumstances of the case.

I don't mean, Sir, to conceal from you, by any means, that this cause was appealed to the Court of Arches, and Sir George Lee certainly did declare a different opinion. But the reason for my mentioning it is, to shew that it is not a notion of my own, thrown out without any foundation at all, but that it was an opinion that was judicially declared, by a person of as great eminence and learning in the profession, as any of his time.

There is another very authentic record I would remind you of, which, I think, will afford the principle in this case, which may be of use to my client. There is, in the papers annexed to the Life of Sir Leoline Jenkins, page 723, a Report, which was made by him and Sir Giles Sweet, (who, I believe, were, at that time, the Judge of the Prerogative, and the Judge of the Admiralty ; the two heads of this profession) to a reference from Lord-Keeper Bridgman. It was a case which arose in the Court of Chancery, between a Mr. Wellwood and his wife. There had been during the time of the usurpation, commissioners appointed, who determined upon

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matter

matter of separation and alimony between husband and wife ; and they had decreed that this Mr. Wellwood should pay his wife three hundred pounds a-year, for a separate maintenance ; which decree he then appealed to my Lord-Keeper Bridgman, to be relieved from ; and Mrs. Wellwood, on the other side, opposed, and prayed that it might be carried into execution. It appears that this matter was referred to those two persons to make a return, stating what was the practice of the Ecclesiastical Court respecting cases of this kind, for separation ; and they state it in this manner. They say

“ That when a sentence of divorce, *in causa sevitiae*, is given, the wife is at liberty to live apart from her husband, and ought to have alimony, notwithstanding any invitations or instances made by the husband, till she do, of her own accord, return to cohabit with him, or else that the Court Christian doth see cause, upon new allegations and proofs, to compel her to return *ad obsequia conjugalia*.

Secondly. They state, “ That there are some sorts of cruelty, which, being alledged in judgment, and proved, and a sentence of divorce thereupon had, the wife cannot, by law, be compelled, against her own good will, to return and cohabit with her husband, though such caution be offered, as is beyond exception.

Thirdly. They say, “ That there are other cruelties (so called), such as may be endured when they happen ; and though they have been some time acted, yet a change in the husband may

may make it almost unreasonable to fear them in new circumstances. There are (he says) likewise sentences of divorce sometimes submitted to by a tacit consent of the party: in these cases the Court Christian may call the wife, and upon causes alledged and proved, compel her, by censure ecclesiastical, to return and cohabit with her husband, upon caution given for her good treatment."

Now the application which I desire to make of this, to the present case, is this—It is stated there, that sentences of separation, by reason of cruelty, are pronounced by the court, upon cases more or less flagrant: that the consequence of these sentences is different: that when the ground is a very flagrant one, upon which they have been pronounced, the party who has obtained it, is not to be compelled to cohabit under any circumstances, without consent; but that if such a sentence has been obtained, in a case less flagrant, and upon circumstances which are a less complete and absolute ground for the party to have complained, and for the party to have obtained it; in that case, the party who has had the separation pronounced against him or her, will be at liberty, at a future time, to apply to the court, and to obtain a reversion of that sentence of separation.

I conceive what is there stated, in respect to cases of cruelty, will bear perfect analogy to cases of separation, where the application is by reason of adultery.

I don't mean to say, that upon the authority of this case, or upon any authority in point of

reason and of policy, a husband ought to be admitted to obtain a separation, upon suggestion only ; nor even upon proof of levity, or of indiscretion ; for such matters, as it was in his power, perhaps, to have prevented, and when they had actually passed, he has no ground himself to apprehend that he has received any material injury.

But I do contend, upon the authority of this case, that where a husband can lay before the court such a degree of proof as makes it impossible, supposing the facts to be established upon which that suspicion has arisen in his mind, that he can with any comfort cohabit, that he cannot, in point of law, be bound to cohabit under such circumstances. And I conceive, although it is not that absolute degree of proof which may be expected in some cases, and which the court, in some cases, receive, to pronounce a sentence of separation, by reason of adultery, which it never could reverse : still, as I conceive, if such a case has been laid before the court, and proved by the party, as shall shew that he has just and reasonable ground to suspect, that the very last injury has been done him ; and that the person whom he is desired to cohabit with, has given him such a just disgust, as that it is impossible for him to cohabit and perform the duties of a husband for the present : then, I say, that according to the analogy of that case, according to the law, according to common sense and common humanity, if such a case as that can be established by the husband, the court is bound, either in the one way or the other, to give him relief. I submit

mit to the judgment of the court, whether you will, under the circumstances of the case, think you are at liberty, without pronouncing any sentence at all, to refuse the monition, or else that you will pronounce a sentence of separation : but, I say, in the one way, or the other, effectual relief the party is intitled to, if he has been able to establish that fact.

Every person, who has ever written upon the question, has always laid it down, that according to the effect of severity the sentence will have, for any act complained of, for any act that a party is charged with, but more particularly adultery ; according to the severity of the sentence, so must the proof be, strict, or less strict ; upon which the court will pronounce that sentence. There is a passage in Donatus, which I will beg leave to state ; it is in his first book, *presumption* 41. [*reads the quotation*] He states that there are three purposes for which a suit for adultery may be commenced. For capital punishment to the party who has been guilty of adultery : for separation *a mensa et thoro*, from the party who has been injured. And, in order to inflict a pecuniary penalty upon the wife, so as to confiscate her portion. Having stated several presumptions, he states, that that which is the ordinary proof, upon which these courts pronounce, in cases of adultery, every day, such as the parties being shut up, and refusing to open the door, and circumstances of that kind, says he, that is sufficient to obtain a separation *a mensa et thoro*. It certainly

certainly is not sufficient to condemn the adulterer in capital punishment; but as the effect in this case is less severe, that of a separation, though it should be a perpetual separation, than that punishment, so a less degree of evidence shall be received.

Now from the case I stated before, I should conceive that a more or less strict proof of the fact of adultery having been committed, will induce a court to pronounce a sentence more or less severe, as knowing that the effect of that sentence will be different. In the one case, where a sentence of separation is pronounced upon a strict and complete absolute proof of adultery; even in that case the canon law does not suppose that the parties will continually cease from cohabitation to the ends of their lives; because even there it is merely that the separation shall be until the parties will consent to cohabit, that is, until the injured party consent to cohabit. But where the proof is not so strict, and where the party having lived in such a way as will shew that the party possibly may have been innocent, or if not, is reformed, and at least reformed from those practices which are the foundation for the court to pronounce the sentence of separation upon—in that case, the party will be at liberty to state to the court what that is, what the sort of evidence was that the former sentence was pronounced upon, and the court, in that case, would reverse the sentence of separation.

Then I advert back to the fact—Supposing you believe the fact as stated in the deposition made by Webb, and supported in the manner that I
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have submitted to you, it is supported by the other two witnesses.—

I say, in the first place, the party has proved that Captain Inglefield has charged her (and the Doctor on the other side seemed to admit that to be a degree of evidence); he has charged her—

“ I saw you kiss the black servant in the presence of one of your children.” Good God ! what kind of impression must that make upon a husband ?—It does not rest upon that, because that servant having been charged, does over and over again, in the most serious manner, declare, not only that she had done this, but that she used the lewdest and most nauseous practices that could be, in order to solicit and induce him to commit adultery.—The presumption undoubtedly is very strong, that adultery had been committed, and the suspicions raised in the mind of the husband by such circumstances as these, are not to be called the visions of a jealous brain ;—but to such a man—such a husband as Captain Inglefield is proved to have been, they are serious matters of consideration ; and the court will hardly go so far as to say that a person who has made such a complaint as this, who has been dragged into the court, as Captain Inglefield has been in this case ;—and I insist it is gross misbehaviour in Mrs. Inglefield thus to force him to it, and that she would not allow a little time for the interposition of friends, or for her husband’s mind to cool, if there was room to do it ;—but that, being dragged in this way into a court of justice, that he should be compelled to cohabit with her : supposing you take
these

these facts for true, I am sure you will seriously reflect and consider with yourself before you will pronounce such a sentence.

But it is alledged on the part of Mrs. Inglefield, that this accusation is not true; she has contradicted it, and she has made the person, who undoubtedly is the main pillar in this cause, himself contradict the evidence that he has before given; for to be sure he has made a deposition in the cause, in which he has declared, that all which he had related before was a mere invention—was absolutely untrue—and that as far as he knows to the contrary, Mrs. Inglefield is a very innocent and much injured woman.

The Doctor on the other side the table said that one line, and what he supposed the most favourable line—at least it is the most favourable turn that he thought fit to give to the case of the party in this cause, who is endeavouring to shew that Mrs. Inglefield has been criminal, is this—says he, at most it reduces the evidence of Webb to a mere *caput mortuum*.

Doctor Harris. I said the contrary: I said one was good.

King's Advocate. The Doctor argued it in two ways:—That in one, namely, in the second deposition, he was a good witness, and to be believed; but that, supposing the court to be of opinion that his latter deposition was affected by the former, then it became a *caput mortuum*, and that he would knock the two depositions one against the other, and by that means both would be shattered to pieces, and have no effect at all.

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I don't apprehend that either of these two cases will be the line, but that you will take it that this man having given a true deposition in the first case, had been afterwards corrupted; that there has been a conspiracy against the husband (which I will desire to oppose to the suggested conspiracy against the wife); and that he having made that detection of the injury done him which he had made when the first examination was taken; that Webb hath been corrupted, and that then they obtained another examination from him contradicting the former;—that I take to be the way in which the court will consider it.

And now let us examine to which most credit is due, or whether any credit at all is due to one of them.

Upon this part of the case, I conceive that the disposition, the temper, the manner in which my client hath behaved to his party, is extremely material to be taken into consideration when we inquire what ground of probability there is that he was capable of doing such an act as this; whether the manner in which he has lived with his wife from their marriage down to the present time, is such as gives the least countenance to such a suspicion. I will venture to affirm, without fear of contradiction, and relying upon your recollection of the evidence, that there is not one husband in England, let him be whom he will, if called upon to prove before a court of justice, that he had behaved in an affectionate manner (as it is fit a husband should do) to his wife; there is not, I say, in England, a man who could prove he had

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fulfilled that duty in a more exemplary manner than Captain Inglefield hath done from the time of his marriage down to the time when this unhappy affair broke out. This is not a marriage of a late date. In the year 1773 they were married, and in the year 1780, Captain Inglefield was called abroad upon the public service. Why if Captain Inglefield were a person of that sort of disposition that has been represented—a man who married a woman for the gratification of his passions, and when those passions were gratified was ready to cast her off, and mix her with the dung in the streets, he would have begun to grow tired of her before that time. Now is that the fact? The Captain's agent * hath proved, that between 1780 and 1782, in the space of two years and about two months, he paid 760 l. to Mrs. Inglefield, as from her husband, and that he knows she received to the amount of upwards of two hundred more, † so that there is above a thousand pounds paid to the wife while the Captain was abroad, ‡ and sixty pounds of that the agent says

* Deposition of the Agent.—“ When his duty called him abroad as a Captain in the navy, he left unlimited orders with this deponent, to furnish his said wife with whatever sums of money she should from time to time draw for or apply for.”

† Remitted from Jamaica by the House of Meure, &c. &c.

‡ This was not alledged, or pleaded, as any proof of extravagance in the lady, for it is known that she did not spend the sum of money remitted to her, but as a proof of unbounded confidence and liberality in the husband, opposed to the malicious and false reports that he had spent her fortune. It appears by the will of Mr. Robert Smith, her father, that she had not a single shilling of fortune that he could spend. She had

says he knows was paid by the wife to his mother : I suppose that was not without the consent or the approbation of Captain Inglefield ; and it was as strong and as amiable a mark of his attachment, of his affectionate regard to his wife, as a man could possibly give. This is not in the honey moon ; it brings it down to the very commencement of this transaction.

Captain Inglefield returned home from the public service in 1783 ; he was then appointed to the command of a guard-ship. Mrs. Inglefield was at Greenwich, above 40 miles distant : why a man, who was tired of his wife, would be glad to have her at 40 miles distance. Was that the case with Captain Inglefield ? The witnesses prove, that, instead of that, he removes her to Singlewell, which was near Chatham, where they could be together ; and that even at the time when it was necessary for him to be on board, he carries his wife with him. “ Oh ! says Doctor Harris, there was good reason for that ; it was that she might have no female friend near her ; that he might bring her amongst his sailor fellows that might be able to charge her with whatever crime he pleased.” Is there any thing of that kind done ? Don't all the gentlemen on board, that have been examined, give as fair and as handsome a depo-

had the interest of 3000*l.* the first ten years after her father's death, and then the interest of one thousand more ; the principal goes to her children : and at her mother's death the rest of the money is bequeathed in the same manner ; and it appears that she always received, in her husband's absence, the interest of her fortune.

sition as possible of their observations of the parties. Does any one of these persons attempt to criminate her by any act that they have pretended to see? There never was a more unfounded, and I take upon me to say, unhandsome reflection thrown out, than that is which the evidence repels and shews to be absolutely void of all foundation, either that there was any attempt made of that kind by the Captain, or that the gentlemen or the common men he had about him, were in the slightest degree capable of forwarding any such design.

Then another ground that is taken is: "Oh, what signifies what this black slave says?—a slave is bound to do as his master bids him—it matters nothing what such an one says; he is under the whip, and every expression that he uses is offered under that apprehension."

In the first place, there is no ground to say that John Webb was not as free a man as any servant which any gentleman in this room has; nothing could be more completely proved. Well, but in what manner did Captain Inglefield learn what he is said to have heard from this black servant? Why the black has given the account. I desire first of all that the court will be pleased (and I am sure you would do it if I had not made the observation)—you will make a distinction between what John Webb has said in his deposition, and what the persons who have been conversant with John Webb since that time, pretended to have heard from him; because I contend, that every syllable which these witnesses pre-

pretend to have heard from Webb, of what is not contained in his latter deposition, is false; whether they speak it falsely, or Webb spoke it falsely to them, I cannot tell, and do not care; but the court will undoubtedly see that when he was brought to be examined in the manner and with the view he was upon the second examination, and had all that tutoring, that it was impossible he should leave out of his deposition such circumstances as some of the witnesses say he told them. Can it be believed, that if Webb told that person that his master bored a hole through the cabin window, and desired him to go and kiss his mistress, and do whatever else she should permit him to do when he dressed her hair; is it possible to believe, if that fact be true, that the black would not have stated it in his second deposition? There is not a suggestion of the kind, therefore that must be left entirely out of the case.

But what is there in his second deposition as to what the Captain said to him?—He says first of all, he strongly exhorted him to speak the truth; then he said, “Jack, you have kissed your mistress.” “No, I never did.” Then he says that he looked sternly, that he stormed, stamped and swore, and said he had seen him kiss his mistress, and asked him how he dared to deny it; and then he says, that under the influence of terror, he said “Yes, whatever you please to say, Sir, I will say.” Now there is one circumstance that is sufficient abundantly to overthrow all this. How came Captain Inglefield not to say, “Jack, you have lain with your mistress?” And how came Jack not
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to say *yes* upon that occasion? That, according to their account, would be something decisive; that would be a foundation for that sentence which we pray; no, but through all the examinations, with all the fear of the whip, and being on board in the absolute power and custody, and under the dominion of Captain Inglefield, he is not brought to say that. On the contrary, he says in his first deposition, that he was tempted in the manner he stated, but was in truth never criminal with her. I say that is abundantly sufficient, to refute it, and that it is all mere smoke that they have thrown out, and that he pretended to throw out, of his being intimidated by Captain Inglefield, because it would be intimidating to no purpose; and upon that occasion in which it would be to purpose, Captain Inglefield would have made him say, if he had the power and the will to make him say what he pleased, he would have made him swear to the fact of adultery, he never would have suffered him to deny that in his deposition; and therefore there is an entire end of that insinuation.

But there are other circumstances.—He * says in his deposition that Captain Inglefield desired he would learn the Lord's Prayer, and the Apostles Creed; and when he had learnt them (which he says he did), he then examined him again, and asked him if it was truth; that is, a man intending to persuade another man to tell a lie, and a lie which is to be the ruin of *an innocent* person, by way of preparation for that, he gets him to learn

* When carried to the Commons by Mr. Gillam Mills.

the Lord's Prayer and the Belief. That is what this man has sworn in his *second deposition*.

But what will shew beyond all possibility of doubt, the clearest conduct in respect of this business, on the part of Captain Inglefield, is, that the moment the man has made the deposition, although he is the commander of the ship, although the man is borne upon the books of the ship, although he had a right to detain him on board the ship, and it is impossible that he could have quitted the ship but with the Captain's free consent, the Captain out of delicacy,—a false delicacy, a mistaken delicacy, an unhappy delicacy it was, he sends this man away; he said he was a good lad, he recommends him to a friend who takes him as a servant, the moment he had made this deposition.

The black pretends to suggest that the deposition was made in a sort of custody; he has said on one interrogatory, that he was kept on board the ship a month; * that he was sent from on board it to Doctors Commons to be examined. What does he say in his next answer? That he came in the Chatham stage coach to be examined, without any one person with him. What man then could be more at liberty?

Having been dismissed in this manner by Captain Inglefield, he went into the house of a

* His reply to the interrogation is, he was kept on board the *Scipio* for above a month, and not suffered to go on shore whilst Captain Inglefield was in London. The commanding officer in his deposition (Lieutenant Brett) says, that the same John Webb had my liberty to go on shore frequently; that he went on shore, sometimes by himself, and sometimes with his associates.

Mr. Pilcher. The examinations that had been taken before, the gentlemen have observed upon. I will not, with any degree of accuracy and pains, labour that part of the case ; but content myself, barely, with averring, that there never was in the world, a clearer examination taken : there never was a more cautious one. The witnesses, every one of them that were present, or at all concerned in the transaction, relate to you the pains they took : they relate to you the commission that was given to them by Captain Inglefield ; which was, to discover and find out the truth, as much as they were able ; and they declare they did. Two only of them, I think, have been at all observed upon respecting that matter : one is Captain Parker, the other is Mr. Martin. Captain Parker was present at the examination at Mr. Pilcher's, at Rochester, and he expressly says, that no improper means were used to induce the man to speak otherwise than the truth. He expressly says, that pains were taken by all, and by himself in particular, to explain to the man what he was about, and to get him to speak truth ; but he says Webb was in a great deal of terror when he took the oath. The doctor on the other side the table says, that the degree of terror was such as ought to have induced the magistrate, and would induce every honest magistrate not to administer an oath. I can't conceive that to be so. What dreadful ideas this poor ignorant fellow might have conceived, I can't tell : he might have had some superstitious notions ; in all probability he had, of taking an oath, and therefore

therefore he might be under a fear of what he was going to do: it was a ceremony he had never gone through, nor probably seen any one go through before. But I should apprehend, supposing that to be the case, which the witnesses do, his having that awe and impression of the oath, as they all admit that he had, that it would have superseded all other impressions of every kind, and that he would have had no impression upon his mind, but that of the act he was about, and consequently would have spoken truth.

What does Mr. Parker say? Why, he believes, if there had been any body, at that time, persuading him to speak in favour of his mistress, that he would have taken an oath on one side as willing as the other. I don't know how that would be, but I suppose he meant to represent, that all the persons present were persuading him to speak in favour of the Captain: but that was not the fact: they did not persuade him to speak on one side or the other, but only to speak the truth. And with respect to the main point, as to being criminal with his mistress in the last act, to be sure in that examination he did deny that.

When you compare this mode of examination with that used on the other side, I conceive it will not be necessary to use many words in order to shew which has the advantage, in point of fairness, and in point of candour. The moment this young man had got into Mr. Pilcher's house, there was an emissary, one Elizabeth Wells, a person who had lived fellow-servant with

him in the family of the Captain, who could not be kept out of the house—that is the account given by Mr. Pilcher, who is, I hope, at least, a witness of as good credit as *any servant* that lived in his house: that he positively says, and the fact is proved by two witnesses who were at that time resident in the family, that Elizabeth Wells used to be coming to the house continually. Mr. Pilcher says he asked the man about it; (he was a free man, in the service of Mr. Pilcher; he was no slave; and I believe the gentlemen don't suggest that he was) he told him she was continually coming plaguing him, that he could not get rid of her, and that he could not help her coming. The fact however was, that she did come, and it produced a very extraordinary effect; he quits the house of his master, without any notice: he elopes from the family, and, till four days after, he knew nothing of what was become of him. At the conclusion of those four days, he receives a letter from Mr. Gillam Mills, a surgeon at Greenwich, containing an affidavit of Webb, contradicting the evidence he had before given. That is a very extraordinary case. How came that affidavit to be drawn? * what kind of examination was there? was there any clergyman, any gentleman, any man of sense, or of credit, that took an examination from him, in order to know what could produce this? They don't suggest such a thing. Mr. Gillam Mills I don't know: he may

* Mr. Mills confesses that he drew the affidavit. (See Interrogation 15.)

be an honest man, and there may not be a single exception to his honesty as far as I know. I protest I think his conduct in this business is very extraordinary. How he has been led into it; what prejudice he may have entertained; what notion of humanity; what impression that the party was injured, and that he might do wrong, in order to right her, I cannot tell: but that the conduct of that gentleman has been a very improper one, I submit to you, Sir, is evident. There is something near the *suppressio rei*, if not an absolute falsehood.

The account given by Mr. Mills, in his deposition, is, "That some time in the month of July, 1785, this man came to him, and told him what sort of a deposition he had been induced to make; that it was all false," and so on.—Unquestionably, the impression that Mr. Mills intends to make by this deposition, is this, that the first time this matter came at all to his knowledge, at least upon any application from John Webb, is upon the application to him at Rochester. Now Church, who went about upon these messages, proves, that he was sent to Rochester, in order to bring this witness to Greenwich to be examined *by Mr. Gillam Mills*.—There is exactly the same kind of suggestion in the deposition that is made by Elizabeth Wells, she living at her father's house at Cobham: this man, her fellow servant, comes to her, and unburthens his mind, and tells her what a melancholy story it is, and that he can't sleep in the night,

night, nor eat in the day, because he has made such a deposition as this.

It is clearly proved, by the evidence examined by them, as well as by us, that from the moment he had quitted the *Scipio*, Elizabeth Wells had been haunting him during the whole time he was in Mr. Pilcher's house; and we have every ground to believe she was the person who enticed him away: we have proved she was the person who accompanied him in the carriage which brought him to London to be examined: we have proved that *Mr. Mills* was ready to take him up, as soon as the examination was finished. He immediately interrogates him:—What did the examiner say to you? What have you said and done?—And we have traced out, that the person by whom he was supported and supplied with money, is Mrs. Smith, the mother to the party in the cause; and they don't deny that they were the people who had boarded and secreted him, and sent him about, from one place to another, under a suggestion that he was to be trepanned by Captain Inglefield. He had no need to have trepanned him: he had him on board his ship, and might have kept him there, if he had had the least idea that he could be induced to give a different account of what he had related. A conduct, shewing a more complete and absolute confidence in the truth of the case, and troubling himself nothing about it, I submit there never could have been.

Under all these circumstances, I contend, that this bold attempt to obtain from this man a contradiction

tradiction of his evidence, has not succeeded, and that it leaves that evidence upon the footing upon which it stood before ; namely, upon the evidence given by John Webb, supported in the manner that it is.

I do submit to the court, that that proves our case, added to the ocular demonstration of the Captain himself, which he informed Mrs. Inglefield of, and which she does not care a single farthing about, but defies her husband ; for that is really her conduct in this business. Taking the whole of this evidence together, it appears to me to afford a complete ground for you to pronounce, if necessary, a sentence of separation, which, under the whole circumstances of the case, I hope and trust you will do.

DOCTOR SCOTT.

S I R,

I AM likewise to submit to you such observations as occur to me upon the evidence in this extremely unhappy cause. It is a suit of restitution, brought by a lady against her husband. A justification is set up. The effect of your sentence will undoubtedly be inadequate to restore the peace and happiness of these parties; however, it is your duty to determine upon the evidence, what provision the law makes for a case of this nature, let that provision be ever so inadequate.

The libel given in on the part of the lady, was, in the common form, pleading a desertion in the husband. Our responsive allegation stated a variety of lewd acts, and pleaded, in direct terms, the fact of adultery itself. If that should be proved, there can be no doubt but a separation must be the consequence.

Captain Inglefield might have sued originally, and would have been intitled to it; but he is equally intitled, in the manner in which he now pleads it, as responsive, and by way of defence, in case the facts which he pleads are properly substantiated. If you are of opinion that he has proved

proved adultery directly; or that he has proved acts from whence a presumption of adultery will necessarily arise;—that the law will conclude adultery: then you will not only approve of what he has done, in retiring from cohabitation with his wife; but will interpose your authority to give a sanction to it in the future, and to establish an effectual separation between the parties.

After perusing this evidence, I can certainly have little hesitation in declaring, that no direct fact of adultery is absolutely proved. If I were to assert the contrary, I should not expect to be heard with much patience by the court, standing in contradiction, as I must then do, to the proofs exhibited in the cause. But, in how many cases which come before the court in suits of restitution, where adultery is set up as a bar; or in suits originally instituted for a separation, by reason of adultery—In how many cases is it; or rather, in how few cases is it, that a direct fact of adultery is proved? The crime itself is of a secret nature, and legal presumption is all that the court in general is enabled to go upon. Persons are in bed together—from thence you presume adultery. Metaphysical certainty, in these cases, is out of the question; moral certainty is all that is required. Shew the parties in such a situation, as that a grave and a discreet man will from thence infer, that a criminal act has passed between them, and you satisfy the demands of the law. If direct proof was required, it would be absurd to suppose a jurisdiction for
relief

relief of the parties in this nature; such a jurisdiction would have no other effect than that of loading a husband with an enormous expence, and creating a triumph for the licentiousness of wives.

The Questions in this case are, as in every other case of the same nature, two.

First. Do the circumstances of this case afford such violent and vehement presumption, that the law will, from thence, deduce a conclusion of adultery? And

Secondly. Is there sufficient proof of these circumstances? because, unquestionably, if the presumptive circumstances, themselves, are not proved, there is an end of the business. It must be admitted, and without reserve, that these presumptions, themselves, must be established to the satisfaction of the court: but the first question, I conceive, is,

Are the circumstances pleaded, of such a nature, as to lead to the legal inference of adultery?

That seems to be the proper preliminary question; because it would be idle to go into the question of fact, if the facts were immaterial.

Therefore, the first question I shall submit to you is, What would be the determination of the law upon the facts stated, if they are proved?

I shall not recapitulate the particular facts deposed to by the witnesses; they are, beyond all controversy, of a very offensive species; extremely degrading to the character of a woman descended from a reputable family, brought up in a virtuous mode of education, and married to a man of character.

character. They are acts not merely of passive debauchery; they are of an active and industrious debauchery; and that in the lowest and grossest forms.

Now, supposing these facts are proved, what would be the legal idea necessarily arising from them? Would they be, in themselves, equivalent to a specific fact of adultery, in case the court should not be satisfied that an act of adultery had passed? Would the party be legally intitled to his divorce, on the ground of these offensive indecencies?

I shall not go the length of asserting that he would be absolutely intitled to a divorce on that account.

Unhappy would the situation of an husband be in such a case, with a wife whose mind was polluted in the extreme—for no one would pretend to say, that a woman, who has in some unguarded hour yielded to an artful temptation, and sacrificed her own honour, and the honour of her husband, to such a temptation—no man would say that such a woman is not infinitely more innocent, is not infinitely more a subject of compassion, and infinitely less improper to be a companion to a person for life, than a woman who exhibits herself in the character of a temptress, and who has employed such abominable arts of seduction, though possibly without final success—and yet the law, in such case, would probably contemplate the business in another light from what the feelings and the judgment of an

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individual would suggest, because it would contemplate the facts for a different purpose.

Nothing short of an illicit connection between the two sexes, is in law adultery: the adultery of the mind is not so. The adultery of the body (if it may be so termed), unless it be in such a way as tends to the possible procreation of children, is not that for which the law affords the remedy of divorce. But then would the law do nothing in such a case as this? Would the court be under the unhappy necessity of sending an innocent and virtuous husband to live with a woman who was convicted of such abject turpitude of mind and body, even supposing that the ultimate fact had not passed? The court would, upon such an occasion, I conceive, stop its hand, and not oblige a husband to live in such contagious society: it is not for me to say how far its power must be exerted at the prayer of such a wife.

The doctor who has gone before me, has shewn that there have been instances in which that monition has been withheld by courts of high authority. In the case of Holmes and Holmes, the court would not admit the allegation; it would be idle to do it, if the court could not afford the party relief, and upon that account the superior court refused the allegation. I am sure, if the ecclesiastical court is bound to grant a restitution, notwithstanding the court is really convinced that such indecent and offensive familiarities have passed, though not connected
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with an act of adultery, there is no man but must wish some other court could be found possessed of power that the ecclesiastical court is so deplorably deficient in, not only with respect to its own dignity, but for the purposes of substantial justice, and for the conveniencies of mankind; but that is not the legal view of the case to which I beg to draw your attention.

The legal view of such a case I apprehend would be this: not that so much is proved, and that the matter there ends—that it is the extravagant story that the doctors on the other side have contended for—that it is a story extremely criminal, but yet not absolutely criminal.—But I apprehend the inference of law would be, that so much being proved, a great deal more is of necessity to be presumed; not that these acts in themselves will intitle the husband to a divorce, but that they do irresistibly imply the fact of adultery, for which a divorce may be obtained.

Now upon the circumstances of this case, is there a man capable of combining two ideas together and deducing a third from them, who can suppose that the parties would go so far, and yet that nothing farther passed between them? That it was her intention, there cannot be the least question; that it was not her intention to inflame her own passions, and those of this lad, without going absolutely to the gratification of these passions, is contrary to all probability: that these acts of temptation were applied without producing their effect upon him, is, I am sure, repugnant to

the apprehension of every man who hears these acts described. If so much of the fact is true as is proved, with respect to their familiarities, it is impossible but that any individual, or that any court of justice which has to determine upon these facts, must conclude that much of what is not deposed to is yet to be presumed, as having certainly and absolutely passed between them.

The King's Advocate, who preceded me in this business, did call your attention to some authorities upon this subject, by way of shewing that the doctrine for which we contend, is, that to which the law gives its countenance; namely, that whenever these sort of proximate acts are proved, that the law for the purposes merely of separation will presume the fact of adultery itself. That it will not do so in a criminal case is clear, but that in a civil suit, and where the relief of the party is sought merely in that mode, that it is a much slighter degree of evidence that will serve for that purpose.

I might trouble you, Sir, with a variety of other pretty high authorities to the same effect. There is an author of high credit in which it is explicitly so laid down, *Muscardus de Probationibus, conclusio 59*: he is describing the several presumptions upon which the court will proceed to a conclusion of the fact of adultery. (*reads the passage.*)

Taking the same distinction which Minovia is stated to have taken, there is another writer who has gone very particularly into this question, and that is Sanctius, book 12th, which is a much weaker

weaker case than this : the lady was not content with being patient in this case. He observes that some of the highest authorities in the civil law, he mentions Baldarus, Doctus, and a great number of other writers of very high name, and he pronounces that the husband who parts with his wife under these circumstances, if he is not certain that the adultery has passed, that he will be safe in conscience in residing from the society of his wife ; and I suppose if he is safe in conscience, he will be protected by the authority of the court.

I shall not trouble you with a number of other authorities which occurred to me upon the inspection of the books, with a view to this subject. The result of those authorities is plainly this ; that these gross familiarities, where they are proved, do induce a legal presumption that adultery has been committed ; that presumption may be repelled undoubtedly, as every presumption may ; as for instance, suppose the parties were only once together, and it was proved that at that time the fact of adultery could not have passed. However, that is not the description of the present case, because the parties lived here in society for a very considerable length of time, the opportunities were extremely frequent, and the inclination, at least of one of the parties, is established beyond all contradiction.

It may be said that the legal presumption could not operate in this case, because the very witness upon whom you rely, the *particeps criminis*, has deposed to the contrary ; but I believe upon the grounds which have been already stated by the
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King's Advocate, you will not give this witness credit for what he dissembles and conceals, in the same degree and to the extent as you do for what he absolutely speaks to : he may have private reasons for stopping short, and one cannot be at a loss for the suggestion of such reasons : as he states it, it is a case of merit on his part, of resistance and forbearance. Now supposing him to be under the dominion of his master, responsible to his master, and under the influence of that degree of terror, which they represent him to be impressed with, is any thing more likely than that he should stop exactly and precisely at that point where his own personal criminality would commence ? I say that the law in such a case would not stop where the witness himself did ; the law would go with him as far as he went, but it would go a great deal farther.

Suppose that a *particeps criminis*, in a case of this nature, was to acknowledge that he and the lady had been *nudus cum nuda* in a bed together, and after that was to swear that he did not commit the fact of adultery ; would the court consider that as any evidence ? would it consider the mere deposition of the party, unless supported by some circumstance of absolute impossibility—would it consider his stopping short of the direct fact of criminality, as any sort of proof that the fact of criminality had not been committed ? Most certainly the presumption of law in such a case would operate against the testimony of the witness, and would be stronger than his deposition.

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This then is the law by which I conceive you will regulate your judgment in this case, and that if you are satisfied that the variety of lewd practices actually took place, and that they are proved in the manner that we have laid them, though no direct fact of adultery is proved to be committed, yet you will infer that the fact of adultery has been committed, and that you must in consequence pronounce a sentence of separation.

It remains, therefore, to proceed to an inquiry whether we have substantiated these circumstances of presumption in the way and according to the rules which legal evidence requires. It is suggested on the part of Mrs. Inglefield (in truth there seemed two suggestions, and those not very consistent ones), that this is either a causeless jealousy in the husband, the mere phantom of a disordered imagination, or that it is a most atrocious conspiracy to get rid of his wife, to rob her of her reputation, and of the affections of her friends, by a slander totally unfounded: that is the turn which is given to the defence of Captain Inglefield, as stated in their allegation: that allegation expressly states, that he is a cruel, morose man; that he is anxious to get released from a woman whom he began to consider with indifference, if not with disgust; and that he prompted his slave, by every practice that could be employed upon his fears, to destroy the reputation of his wife.

The gentlemen, sensible of the extreme improbability of such a charge as that, have endeavoured to soften it, and they seem to me to have
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totally deserted the case of their client, as appears upon their own allegation, for they make it to be merely an act of jealousy on his part.

Now is there a witness examined in this cause, from whose testimony you can fairly collect that it was the character of this gentleman to indulge perverse suspicions at the expence of his wife? You have two witnesses, and two only, who have given the least intimation of that sort, that is Mrs. Betty Wells, and Harris the coachman, who tell you that he did occasionally make some inquiries about the conduct of his wife (I shall have occasion to observe upon their credit by and by): but supposing this to be a mere matter of groundless jealousy, does not the improbability strike every body who attends to the facts, that his jealousy should fix upon such an object as this? Is it not the most unnatural circumstance in the world, that a man, being of a suspicious temper, should fix upon a person as the object of his jealousy, who, as the gentlemen themselves acknowledge, and who, as every body else who attends to the common workings of human nature must admit, is the very last person that could possibly occur for such a suspicion to fix upon? But the history of the family itself gives the lie to this assertion. What is the character that almost every one of the witnesses gives the parties? "That they were a very happy couple; that he treated his wife with tenderness and affection." Why if he was a person whose mind was open to the reception of such jealous crotchets as these, would the parties be described as persons living in
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a constant course of conjugal happiness? If he was a man of the disposition from which such a charge as this must have originated, you must have heard of it, even from the servants; it must have been breaking out constantly in complaints, remonstrances, and suspicions, betraying themselves to every body about them.

As to the other imputation, there is something so monstrous in it, namely, that this was a foul conspiracy on the part of Captain Inglefield against his wife, that the very idea of such a procedure terrifies one: is there any thing in the evidence that gives the slightest colour to it? Consider the character of this gentleman—take it from their own witnesses; I am sure if any man in this court had occasion to draw an amiable character, he could not do it better than in the expressions which came out of the mouth of the witnesses produced against Captain Inglefield:—You have no exception to this but in the case of two witnesses only, Betty Wells, who is a very active, a very industrious agent throughout the whole of this matter, and a Mrs. Hodgson; and the effect of what they say, when considered, is so extremely frivolous and trifling, and so qualified by exceptions and reserves, that they cannot be considered as differing in that respect from all the other witnesses who speak to that particular.

The letter which has been read in this cause, and upon which the King's Advocate has so fully observed, furnishes another very strong contradiction.

Mr. Inglefield is no volunteer in this business—
Does he drag his wife into court upon a charge of

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this nature, after having industriously propagated the report of her infamy?—No such matter.—On the contrary, it appears by that letter, that he himself was not at all disinclined to conceal her dishonour, till that dishonour was actually published to the world.

The proposal of a reference, or rather of an examination by friends, is likewise another strong evidence that the intention of Captain Inglefield was not what has been imputed to him.

It has been said to be a compromise, and that it was prudently declined in this case by a person who wished to submit her cause to the investigation of a public court of justice. But the proposal was not in the nature of a compromise between the parties, it was simply that the person who is the main pillar of evidence in this cause, and upon whose testimony it must, in a great measure, be ultimately decided, that he should undergo a fair and candid examination before the friends of both parties, and that upon his examination it should be determined—not to establish a disgraceful compromise between them—but that those friends should, taking the deposition of that witness, make that sentence which you are now called upon to do, for the one party or for the other.

But what is decisive in this case, that it could not be that conspiracy which is imputed, is, that Captain Inglefield must not only be the worst, but the weakest of mankind, if you can conceive him to be a party to it, for he not only selects the most improbable instrument for the purpose, but he gives this instrument only half his lesson; he is to tell him a story, which, according to what
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the gentlemen insist, would not effect the purpose : if it had been his intention to get rid of his wife, would he have stopped half way?—You might just as well say, if he wanted to convict his wife of felony, that he would direct her to be indicted for a breach of the peace, as that he, meaning to get rid of his wife, should choose to put into the mouth of the agent, whom he employed for that purpose, a story which would not procure the thing he is intending to solicit ; that is a story which carries its own confutation with it ;—that there was therefore no fraud, no conspiracy in this case, on the part of Captain Inglefield, I think we have abundant reason to consider as proved to the satisfaction of every man who hears the cause. In his conversations with Webb, is there any thing artful, any thing that can induce the court to believe that he himself was not fully convinced of the charge, that he is now supporting, and that he was with great uneasiness pursuing a serious inquiry into the conduct of a woman, whom at that time he affectionately loved. It has been asked why were not these inquiries made at Singlewell ? Is it at once that a man brings himself to disclose the turpitude of his wife ? Is it at once, and upon the first indications, that he publishes this matter to the world ? It is extremely tender ground, not only in point of delicacy, but in point of common discretion, how a husband should act upon the first discovery of those circumstances which plant suspicions in his mind ; the rational way is that which this gentleman has pursued ; to remonstrate with his wife ;—that appears to have been done in very warm and passionate terms, and

to wait till those suspicions are established upon some evidence upon which he can rely : merely to throw out suspicions, which, at the time of throwing out, he is incapable of supporting, to the satisfaction of the world, would be a conduct which could not be expected from any man of good sense.

In what way does he apply to the witnesses? Is it a money business? The gentlemen say they don't pretend to assert that it is a business in which bribery has been employed. Is it a business in which promises of preferment have been made, in which application to the boy's hopes of any kind are addressed? Nothing of that nature is suggested. There is one of the witnesses says, that Captain Inglefield would give him ten guineas if he got out of the kingdom; but Webb himself, when he is examined, says nothing of that circumstance, and I conceive with respect to every circumstance, stated in the testimony of the witnesses, as spoken to by Webb, that if those circumstances don't appear upon the examination of Webb himself, they are not to be considered as composing any part of the evidence in this cause, but in truth confutes itself.

If it was material to Captain Inglefield to get rid of this man, nothing is clearer than that he was in absolute possession of him, and it was his own spontaneous act that he was ever delivered out of his possession; he unquestionably had power enough to get rid of him in the manner here suggested, without any application of money for that purpose; but his not having done so, but admitting him to take his range at large after he had
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given his evidence, must apply itself with irresistible force to the conviction of every man who hears it, that he had no other view in this business, than the clear investigation of truth.

The conduct of Captain Inglefield therefore stands clear and un sullied in this business ; there is not the least reason in the world but to believe that he himself felt, and has throughout the whole of this business felt, the conviction which he means to impress upon the court ; there is wickedness undoubtedly in the cause, but that wickedness is not with him. Webb is certainly perjured in the one deposition or the other ; but if his first deposition be true, there is wickedness elsewhere. There is that wickedness in the conduct of Mrs. Inglefield, which will entitle her husband to a separation from her.

The principal witness in this case undoubtedly is Webb, and he is to be regarded with a considerable degree of distrust, because he is a *particeps criminis* ; he has likewise totally contradicted himself, and therefore, in one part or other of the evidence, he must be considered as perjured. But the gentlemen have themselves insisted, that he is not a witness to be thrown aside. if the two depositions tell a story that is absolutely contradictory, one of them must necessarily be true, and the province of the court in this case is to weigh the credibility of these depositions—to oppose the one to the other—see how far each is confirmed by collateral evidence—and from thence judge of the total effect of the two.

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That a witness coming into court to deliver his testimony, is to be presumed to speak the truth, speaking under the sanction of an oath, is an universal maxim of evidence : that he should come again, for the purpose of contradicting himself, is a liberty not likely to be permitted ; nor, as I should conceive, can it be permitted, for any other purpose than of explaining what credit is due to him :—that his latter deposition can be made use of for any other purpose ; that it can be considered as containing the truth of the business, and as that upon which the court can at all found itself in the sentence to be given in this cause : that is a use of the evidence of a man contradicting himself, which I conceive, cannot legally be made : all the effect of such contradictory evidence, can merely be to weaken the credit which would be otherwise due to his first testimony ; but that it should itself be taken for truth, or should be admitted as evidence of the reality of the facts which it asserts, I submit to you is not consistent with any principle of evidence : but even supposing that were the case, you will be pleased to observe, with respect to the credibility of this man's deposition, the different way in which these examinations have been taken ; and, if it should appear to you, upon the circumstances which accompany these examinations, that one was the fair and the free deposition of the party speaking spontaneously, and without constraint : if it should appear to you, with respect to the other deposition, that here has
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been a person practised upon by a combination of individuals, to extort a retraction from him ;— if that should appear to you to be the state of the case, I apprehend that you will have no difficulty in deciding which of these depositions is entitled to the greater credit.

The party was first examined by Mr. Inglefield. Upon that examination, as a matter passing between the parties themselves, I shall not lay much stress, but consider the subsequent examinations, and the manner in which they were taken. Was he, at this time, in the custody of Captain Inglefield ?—Captain Inglefield was absent during the principal examination. Was he in the hands of persons linked by private confederacy with Captain Inglefield ? or was he in the hands of men, to whose honour and purity of character no exception has been taken ? Was he examined by these gentlemen in a light manner ? or was he examined under every possible application to his conscience, from the impressions of religion, that could be employed for the purpose ? It is most clearly proved, by the testimony of every gentleman who attended that examination, that this was the case. The impression which it made upon these gentlemen at the time, is very material : the appearance of the person ; all the circumstances attending the examination, are material as to the degree of credit to which he is intitled.

In cases where a party makes a contradictory affidavit, it is stated to be the practice of the
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Court of Chancery, that the man should be personally produced, and be examined *viva voce* by the court. It is so expressly laid down in 2. Vezey, in the case *ex parte* Lloyd, for the purpose of having the benefit of immediate inspection ; an advantage which, in this case, these gentlemen were possessed of. Much use has been made of the manner in which Captain Parker delivers his evidence. It has been said, that though the boy spoke very fluently and artlessly (that is the account given by every one of the witnesses ; and they speak of that as the foundation of the conviction which it made upon their minds), yet, when he came to take the oath, that he hesitated, and betrayed reluctance.

Supposing that fact to be true, was any thing more natural, or more easily to be accounted for, if what we contend to be the case, was actually the fact ? namely, that he had committed adultery with this lady, and that at the time he was making a confession, in which he told the truth, but not the whole truth, was any thing more natural than that he should betray that reluctance which is imputed to him ? But you will be pleased to observe what is the effect and impression which his sole examination had upon Captain Parker. He says, that by this examination, he was very much prejudiced against Mrs. Inglefield. Why, if Captain Parker supposed this to be an unfair examination, and that this oath, which the man took with such apparent reluctance, was all a falsehood, as they would collect from the evidence :

dence: how could it have produced any such effect upon him? Instead of being prejudiced in that manner, he must have been prejudiced directly the contrary way: he must have felt that resentment, which every honest man would feel upon such an occasion; at seeing such arts employed by any husband, to the disadvantage of his wife.

This negro-servant is afterwards discharged, and set in a perfect state of liberty: the effect of that upon the case, is certainly extremely weighty: that he was not kept in any sort of custody; that he was not detained, in order to be producible just whenever the purposes of Captain Inglefield might call for his production. He is sent up, not in custody, for his examination, but sent up by himself.

The subsequent declarations in this case, which he made to a variety of persons, are not immaterial. You find him, upon an interrogatory, acknowledging to Ann ———, that what he had said about his mistress was true. You find him acknowledging to Sarah Litchfield, another witness, that what he had said about his mistress was true. Were these persons in this confederacy? Was it necessary for him to be persisting in this story to all the world? You have him stating the same degree of evidence to the gentleman taylor whom they have produced in this business, Mr. Thompson. He says, that the first account which he gave of the matter to him, was, that what he had said, respecting his mistress, was founded in truth.

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Now, how far is he supported? for certainly his credit does stand upon such a wavering foundation, that I should not think myself warranted to contend, that he was a witness upon whom, singly, the court would ground a sentence.

You have had stated to you, the depositions of Mr. M'Carthy and of Mr. Feattus; I shall not recapitulate them, as I can add nothing to the effect of the observations which have been made upon them. Certainly the situation which M'Carthy describes, of a servant shut up in a room with a lady, the door fastened on the inside, for that is the material circumstance, which corresponds with what one finds in all the old books that one rummages upon these occasions; but without recourse to books, the common understanding of mankind will suggest, that that is a circumstance pregnant with suspicion. The other circumstance, deposed to by Mr. Feattus, that she should select him to be her errand-boy, while she detained the black in her bed-chamber with her, and this for the space of some minutes, does seem to be a fact of a very extraordinary nature.

There is another piece of evidence in this cause, which I know I am not intitled to use, but which the court, in a case of some nicety and difficulty, will naturally resort to; and that is the answer of the parties upon oath.

I don't pretend to say, that the answer of Captain Inglefield can be stated by us; but the court will look into it, and will see what has been the feelings of the husband's mind upon this occasion. The court will see, whether circumstances,

stances, to which he alone was witness, have not been stated by the party upon oath, and which would extremely well justify (even if he was not supported by external evidence) his resistance to the demands of his wife upon him in the present suit.

Now how is this general evidence repelled in the present case? The gentlemen say, the general character of the lady repels suspicion upon this occasion. God knows, general characters may have some weight, but we know, there must be some period, at which innocence ceases, if it ceases at all. The greater part of mankind don't set out originally bad, but yield, by degrees, to temptations—to the impulses of passions, which grow stronger and stronger.

The doctor has complimented my client upon his person, at the expence of his understanding and principles, that he is a very elegant person, and therefore that it is not likely.—We know very well, that it is no uncommon thing to leave celestial food, and prey on garbage; and the experience that this court affords us, shews, that Desdemonas of this species are not very uncommon. Upon what principles ladies proceed, whether upon Foote's maxim, "that a good gallant cannot be of a bad colour:"—whether it is curiosity, or what, is not for me to say—certain it is, that instances of this sort are not uncommon.

The circumstances under which his second deposition has been taken, afford a very striking contrast to those under which his first deposition

was taken. If ever custody of a witness was proved, and that of a very serious and impure kind, I say, the custody of this lad is proved; and the pretence they have set up, that there was an intention on the part of Captain Inglefield to trepan him, has not the least foundation in point of fact, because Captain Inglefield had actually dismissed him; and therefore, to suppose that there was any intention in Captain Inglefield to detain him, is a sort of justification which is set up, but which cannot apply at all to the present case.

You find, that for his examination he was brought up in this custody; and even in circumstances that are a little extrinsic to the business, he appears to have lost that reverence for truth, by which his first examination was dictated, for he is materially contradicted. He says, in answer to an interrogatory, that there was no conversation passed between Mr. Mills and him respecting his examination. Now, if you look into the evidence of Mr. Mills himself, you will find that conversations did actually pass, and passed at a very improper time: that Mills inquired of him, in the post-chaise, what the examiner had asked him, and that he made a discovery of what had passed upon his examination.

The other circumstance which has been pointed out, namely, that he swears he was not at liberty on board the ship, is fully and effectually contradicted by Lieutenant Brett, who proves that he was, at that time, in the absolute enjoyment of his liberty—was free to go where he pleased,

pleased, and to say what he pleased, upon that or any other subject whatever.

None of the other witnesses in this cause are, in short, very material; for, as to any conversation they may state, which he does not depose to, those conversations, as I have had occasion to observe, compose no part of the present evidence. But when you see, throughout the whole of this business, on the part of Mrs. Inglefield, such precautions used, as are inconsistent with the fair and free investigation of truth: when you see such instruments employed, as are materially affected in point of credit; and, I am sure, the King's Advocate has shewn, that Mrs. Wells, the principal agent, and one of the principal witnesses in this cause, is very considerably diminished, in point of credit. When you consider the whole effect of the depositions; not only the depositions of Webb, but of his examinations before gentlemen of undoubted character, who took every possible method to extract the truth from him, with a perfect indifference between the one party and the other, and surely without any intention to abet so foul a conspiracy as this is pretended to be; without troubling you any farther, and leaving it to the observations which the King's Advocate has stated so much more fully than myself—I hope you will see abundant reason to pronounce, that there is such a proximation of facts, as sufficiently prove adultery, and that will lead to what we seek—a separation between the parties.

Adjourned.

SATURDAY, JULY 22, 1786.

DOCTOR CALVERT.

DOCTOR Harris, I need not give you any trouble to reply.

This is a suit brought by Ann Inglefield, against her husband, John Nicholas Inglefield, Esquire, for restitution of conjugal rights.

A libel was given in, and therein it is stated, that the marriage took place on the 27th of December, 1774, and that from that time the parties lived together very well, till December, 1784, when Captain Inglefield left his wife.

To this libel, an answer was given in confessing the marriage; and by way of further answer, an allegation on behalf of Mr. Inglefield, pleading adultery in Mrs. Inglefield.

There is no doubt, the marriage being confessed, but that the husband and the wife equally are obliged to cohabit with each other, unless some reason, cogent in law, should be given, why they may be justified to live separately. The plea, therefore, of adultery, was a good plea, and the prayer of that allegation is, that Mr. Inglefield may have a judgment of separation,

tion, *a mensa et thoro*, on account of that adultery.

Now that there is no positive fact, as it has been said, to prove the adultery in this case, is not to be disputed. It is true, as has likewise been said, that the proofs of adultery must always in their nature, be in some degree presumptive; real and direct proof of the fact is not to be expected; therefore, the question always will be, whether there is evidence of such near, such approximate acts, that there must be a legal presumption of the adultery:—in this case it is acknowledged on the other side, and it cannot indeed be denied, that there is no such evidence before the court. There is no one witness who speaks of adultery: there is no one witness who says he believes there was adultery committed; and to presume it in such a case, is certainly going farther than the court ever did.

But, notwithstanding that, it is argued, that though there are not what would be called instances and facts of adultery, yet that the parties are found in such situations, that the legal presumption will be, that adultery was committed; and quotations have been made from books, to shew, that under some special circumstances, such as two parties being seen alone, being locked up together in a clandestine manner; that such circumstances have often been admitted as evidence, from whence adultery is necessarily to be presumed.

There is no occasion to go to books for authorities of that kind, because every day's experience,
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in cases of this sort, shews, that upon evidence of such circumstances, sentences of divorce have often been given. But, though it is certainly true, that a man and woman being seen clandestinely together, very often their being heard upon a bed, their conversation being overheard, and a variety of circumstances, may lead to a presumption of adultery; yet, I believe, there is no instance, nor can I conceive that there can be one, where such circumstances being produced by the *particeps criminis*, who undertakes to prove the adultery, if he or she should think proper to vouch it; and who has a certain knowledge whether adultery was committed or not;—there is not an instance where there is no suspicion of collusion (which I take to be the case here; because, where there is collusion, that gives a different turn to every presumption and circumstance of the case), but where there is a charge of adultery; there is not a single instance brought, where the *particeps criminis*, being examined and vouched, to prove the adultery, that he should give an account of every thing that passed, but assert, that adultery did not pass. I say I don't know of any such instance as that; and the reason is clearly this, because the proof of adultery, in these cases, is to depend upon presumption.

Now, in the nature of it, presumption must be done away when you come to evidence; the reason why you deduce adultery from those circumstances, is, that from the time, the place, and the circumstances, all put together, the law presumes that adultery has been committed. But if you
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have the evidence of a person who is to prove whether there was or not, you rely upon his evidence, and he proves there was not, the presumption is done away; therefore, I cannot but conclude, that there is not only no positive fact of adultery proved, but that there are not such situations of the parties proved, from which adultery must necessarily be implied. But still it is said, that notwithstanding adultery is not so proved, that you can have a sentence of divorce, yet that there is such infamous conduct proved on the part of the lady, that the court would be justified in giving a sentence of dismissal to the husband, though not a sentence of separation: and that is founded upon a subsequent prayer, which has been made in this cause; not to the original allegation given in; but the prayer is altered, and it is in the alternative, either to divorce or to dismiss the party. And upon that head it has been contended, that the court must admit of such a judgment as that is; because many cases may arise, where there shall be full and satisfactory proof of such indecent, and such improper conduct of one of the parties, that it would be contrary to reason and to law to send them to cohabit together again.

In support of that position, there has been quoted a Report made by Sir Leoline Jenkins, and Sir Giles Sweet, to Lord-Keeper Bridgman, relative to some questions that are put to them, of the practice of the Ecclesiastical Court, in cases of cruelty; and it hath been argued, that what

was said there, upon cruelty, will apply to this case of adultery likewise.

There has likewise been quoted a passage from ——— relative to the different degrees of evidence which are required, for the purpose of the different sentences that are to be pronounced, and that it would apply to this question : and the case has been quoted of Holmes and Holmes, in order to support the doctrine contended for.

It has been said, in answer to that case (and which is very true), that the case makes against the position for which it was quoted ; and though in an inferior court the sentence obtained, a superior court corrected that error, and there the allegation was not admitted. And it is said (and with great truth), that in many cases, where this point of law hath been urged, it has been held that there is no difference between a sentence of separation, *a mensa et thoro*, and a dismissal from such a suit as this. It is held, that the enormity of the case must admit of such a sentence, under some circumstances, and under some very strong proof of atrocious behaviour.

It is certainly true that such a question as that can never come before this court ; nor even properly to be argued by the counsel : it certainly is what the court cannot enter into, and give any opinion upon, until the facts are proved out of which that point of law is to arise ; for, unless you indisputably prove such immoral acts as you ground your relief upon, no such question can arise. First, shew what your case is, and if the facts

facts require it, then the court will certainly give its opinion upon the point of law.

That will induce me to go into the evidence, to see what proof there is before the court; whether it is a satisfactory one, that such enormities were practised by this lady, as are sufficient to found this question of law upon which has been urged.

There is one witness, *videlicet*, John Webb, is examined to the behaviour of his mistress towards him; and to be sure, what he, a lad of nineteen years of age, speaks of, is very improper, very unbecoming, and very nauseous behaviour; but the consideration is, how far that has been proved? This black lad alone deposes to this fact:—it is contended, however, that he is supported in his evidence, and the witness he is supported by is M'Carthy, a man who was in the ship at the time of the last act (which is the only act in which he is pretended to receive any support); and therefore that is all that is necessary to be considered.

The boy says, Mrs. Inglefield called him into the after cabin, and told him to empty a basin of water, and he states what followed at that time.

M'Carthy says, upon a certain day he did hear the boy called into the cabin to empty a basin of water, which he accordingly did; that he heard him return into the cabin again; that he heard the door fastened on the inside, and presently afterwards he heard great struggling, and such a noise, that he concluded adultery had been committed between them; and he says he

should have continued to believe it, had it not been since repeatedly and solemnly contradicted by the said John Webb.

Now let us see what sort of support this is :— The fact is, that Mr. Inglefield having some suspicion of ill conduct in his wife towards this boy, told M'Carthy of it, who told him he never had heard or suspected it before. He is bid to be careful to watch what passed between them ; and he says, that some time after, he observed this to pass, and from what he heard, he should have thought adultery had been committed.

Now, I should desire to know, from the facts he deposes, what should lead him to suppose that adultery had been committed, unless it had been from the hint that was given him from the husband. He says he never observed any improper conduct in the lady ; but from the hint of the husband, that probably adultery would be committed, if the parties were left alone ; therefore, he must think so ; but he does not speak of any one circumstance to induce him to that belief : nor does he speak of any such practices as the boy says passed. He did not look through the key-hole, or windows, or any thing that should induce him to believe that.

Then as to the support Webb was to receive from another boy, Thomas Slade Feattus, that does not merit observation. The boy was sent of an errand for a key, and he brought it up stairs : nothing arises, in the least, from that.

Therefore, this John Webb, supported in no other way than in the way I have observed, is
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all the evidence that is to be relied upon, to establish the atrocious behaviour imputed to this lady. Add to this, that this one witness, who is depended upon, has, in a subsequent examination, denied every thing he has before said: he, in that, as solemnly swears, that every thing he said is false: he persisted in it, indeed, but it was contrary to his own conscience, and his own knowledge; and that every word he spoke of it was perfectly false. What then is to be done with such a witness as this, who is the only witness to be relied upon, and he speaking in this manner?

It is contended, on both sides, that the boy is to be believed. The counsel for Captain Inglefield contend, that his first examination is true. On the other side it is contended, that it is to be believed that his second examination is true: and it so happens, that it cannot be avoided, that each, in arguing for their client, must destroy their own case, because they must make such observations, as must destroy the credit of the boy in one case, then it must be seen what sort of witness he is, and how little he is to be depended upon.

But let us see how consistent and how probable his story is. He came, he says, to live in Mr. Inglefield's family in May 1783;—that from his coming into the family, his mistress cast a loving eye upon him, and was guilty of degrees of advances, from the first of his coming there, till the time he left the service—till he was discovered, as it is called, in December, 1784.

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It is extremely strange, if these advances were perpetually made by the mistress to this boy, that nobody in the whole family should ever find it out. All the servants have been examined, and they every one of them say they did never hear of it, nor ever suspected it. It is alledged that he stood the jokes of the family, but all the witnesses say they never perceived it. The witnesses say the behaviour of the mistress was extremely good, that they never suspected her, and that she behaved with proper distance to this boy.

But there was an anonymous letter sent to Mr. Inglefield, and in a letter from him to Mrs. Inglefield, which has been read, there is something (he says) he saw through the crack of a window which gave him reason to suspect, though what he saw was such as at that time made him think it only some improper imprudence arising from curiosity on the part of Mrs. Inglefield; that though it troubled his mind, yet he had not then any idea that adultery had been committed; but taking it up from time to time, it made such an impression upon him, after setting M^cCarthy to watch, and his bringing him word of what he heard, added to some anonymous note that he received, that he taxed the boy, and the boy told this story: First he confessed to Mr. Inglefield alone the same as his deposition; a day or two after he was examined likewise by Mr. Brett, and Mr. Brett says he continued in that story—That was upon the 21st of December. He was interrogated again upon the 22^d by the Clergyman of the ship Scipio, and he (Mr. Martin) says he spoke to the
boy

boy very solemnly about it, and he strictly and cautiously examined him as to the truth of it, and he says the boy persisted in his story. He was examined again upon the 28th of December, that was in the presence of Wood, Brett, and Rogers, officers of the ship *Scipio*, and then, though they cautioned him much to speak the truth, he still persisted in his story—that was the latter end of January : but he was examined the 28th of December at Mr. Pilcher's, before Mr. Pilcher and other witnesses : he was cautioned much to speak the truth ; he still told much the same story ; they reduced it into writing in the form of an affidavit, and Mr. Pilcher administered an oath to him as to the truth of it.

One of the witnesses, Mr. Parker, says he observed that the boy seemed pretty resolute when telling his story, but when they had reduced it into writing, though he acknowledged every sentence of it to be true, yet when he came to take the oath, he boggled, trembled from head to foot, and seemed unwilling to take it ; however the oath he took.

He was examined again the latter end of January, as I observed, and persisted still in this story. Now it does happen, that however this boy told this story, be it true or false (if a false one, he was still obstinate enough to persist in it ; and one of the witnesses says, if it was not true, he does not wonder that he should do so), a lad of that sort—of nineteen years of age—on board a ship—in the service of the ship—he might have
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been corrected merely for telling of lies, and a variety of things; he might be afraid of punishment, if he had altered his story; but it happened that, after that, when he had got out of the custody of Captain Inglefield, and got to other people, he disavowed every word that he had said; and the method in which he went away from Mr. Pilcher's (for it was at Mr. Pilcher's house he lived some time after he left Captain Inglefield) is not extremely well cleared up, but still there are witnesses who speak to it. He went to Mr. Pilcher's in May, and staid with him two months; then he left him abruptly, and the first he heard of his being gone was, he received a letter from Mr. Mills, an apothecary at Greenwich, who interested himself much in this business, being acquainted with Mrs. Inglefield: the first he heard was a letter from Mr. Mills, that the boy had made an affidavit of a different nature.

It is suggested that Elizabeth Wells was an instrument in getting this boy away from Mr. Pilcher's, and getting him to recant his story. Wells says, the boy came to her in the month of July, and said he was troubled in his conscience, and desired to have an opportunity of saying the truth: he desired she would tell her mistress (Mrs. Inglefield) that he was ready at any time to do so.

James Wells, her brother, says he saw the boy the next day come to inquire whether the message had been delivered to his mistress, and much pressed that the story might be told to her.

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Upon this notice being given, Mrs. Wells went down with one Church; to bring up several witnesses, and among the rest they went in a post chaise to Rochester, to bring up Webb in order to give his evidence, and to hear what his story was. They carried him to Greenwich, where he went to the house of this Church, boarding at the house of Mills; there he was kept till the time he was brought to London to be examined, and there he was examined. Upon this second examination, on the 17th of July, he speaks directly contrary to what he had before sworn.

Now, as to whether this was any improper conduct on the other side, there is not sufficient evidence to shew that improper conduct: but the boy certainly did swear contrary to what he had before.

These are the facts that are adduced in the cause, and how is it possible for the court to believe the boy, first swearing one way, and then directly contradicting it? To be sure, every body must see that there is no evidence in this cause upon which to ground the sort of sentence that is prayed.

There are some observations perhaps to be made upon the general character of this boy, and it is alledged and spoken to by some witnesses, that he was a liar.

One need not go out of the evidence to know whether a person who makes such affidavits as this, will tell falsehoods, when he can

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swear to such direct contradictory facts. But there is evidence in the cause of the boy's voluntarily telling lies—of declarations of his that would go to affect his credit, though they are not evidence in the cause—and there is that circumstance which several of the witnesses speak to of his declaring extra-judicially (for he said nothing of it in his deposition) to several persons, that his master directed him to take indecent liberties with his mistress when dressing her hair, and that he himself would make a hole in the wainscot to look in and see. This is not in evidence in the cause, but is spoken to as declarations made by the boy, and will go to affect his credit. Now, such facts as that being not in the least in proof, considering the great improbability of it, it being so inconsistent with Captain Inglefield's character, and every circumstance in the cause, I cannot look upon but as a lie told by the boy, and for no reason, one would think, whatever. Such facts are in their nature so improbable, that I think it is a proof that the boy is telling falsities, where one cannot see any reason for his doing so. I think there are other instances of the boy's telling falsities where there was no occasion; one does not see from what motive: and that comes out in the evidence of Thompson, who was a servant to Mr. Hamilton; that at the time the boy was in the service of his master, he slept with this coachman, and he says when they slept together, he used to tell him of the indecencies that his mistress had been guilty of

to him ; but he says he voluntarily told him so ; he never asked him. The boy voluntarily goes and talks of it, knowing, as he would alledge then, that he was telling a falsity ; but he spoke afterwards to the same coachman, after he had deposed differently, upon a different footing. These are at times when he was not called upon, but seemed voluntarily to tell these falsehoods.

Upon the whole, I think nothing can be clearer in this case, *let the matter stand how it may*, that there certainly is no evidence of the guilt of this lady ; and therefore what I must do is, I must declare that the marriage is proved—that Captain Inglefield left his wife in 1784—that there is no proof of adultery—there is no proof of this indecent conduct—no satisfactory proof to the court ;—therefore it is certain I must comply with the prayer.

It is a very unfortunate case—a melancholy consideration it really is—that such a wretch as this boy proves to be, who can swear so directly contrary, for, *let the truth be how it may*, his perjury is fully proved—he is a wilfully perjured lad ; there can be no hesitation about that—It is a most melancholy thing, that a boy getting into a family, should be able to disturb the peace of what was a happy family, when he came into it ;—I can't help observing that the characters of both Mr. and Mrs. Inglefield are without exception almost (there is but a witness or two speaking otherwise)—exceeding good—this boy has made such disturbances and distress in that poor family, that

it is a melancholy consideration that it could not be cleared up without such a proceeding as this—but as it has been inquired into, and every evidence has been produced, I am not without hopes, but that here will be an end of all dispute between the parties.

I must admonish Mr. Inglefield to take his wife home, and treat her with matrimonial affection—and I hope he will willingly do that—he will consider he has not been able to prove any ill conduct in his wife, and that when noble and generous spirits have got any idea of this sort into their heads, the slightest things will have great effect, and perhaps it is upon the best of tempers that they have the greatest effect; but he will see, if he takes it into consideration, that he has been liable to be abused in some instances at least; that therefore he may, and I hope he will, persuade himself he has been so in all.—What I would instance is, he mentions in his letter a circumstance of his wife, at a certain time, in the middle of the night, ringing her bell, and when the maid came, telling her to send up the black, she wanted him. Now that has been told Captain Inglefield by some body, and he certainly has been made to believe it—but it is most clearly in proof it was not so: the witness, Betty Wells, has been examined, she positively says there is no truth in it;—she tells how the case was: that upon a windy night the window was open, which disturbed Mrs. Inglefield; and she rang for her maid in order for her to shut the window; so there

is no truth in it—and if he would but have given himself leave to have considered a little coolly about it, neither he nor any body who was not under that influence would give credit to such a story as that. Is it likely from the character of Mrs. Inglefield, or any body but the most abandoned prostitute, that she could, in the middle of the night, ring for her servants, alarm the house, and then say, “go send up my foot man to me?” Footmen and gentlemen are sometimes let in by stealth, the door being left open; but there never could be an instance of such a public manner of doing a thing of that sort—that the maid should come up, and she should then say, “send Jack to me, send up my adulterer.”

Now a person who was not influenced by that passion, would not have given credit to such a story as that.

There seems to me to be sufficient reason for Mr. Inglefield to believe that these hints which have been given to him, have had a greater and a stronger effect upon his noble and generous mind than they need have had.

On the contrary, Mrs. Inglefield may well consider, that whatever has arisen may proceed from an excess of love on the part of her husband; for no persons are so liable to jealousy and suspicion, as those who have the greatest and the sincerest regard for the object whom they suspect.

If they will come together again, as I hope they will, with these sentiments, I still shall not despair of this being a very happy family, as they
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had been before—they have both excellent characters, and are both able to make the conjugal state happy, which I hope will be the case.—All I can do is to pronounce for the marriage—to decree a monition to Mr. Inglesfield, &c. &c.

The Decree for Restitution of Conjugal Rights was entered in form, and read by the Register.

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